JANUARY- DECEMBER- 1972

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
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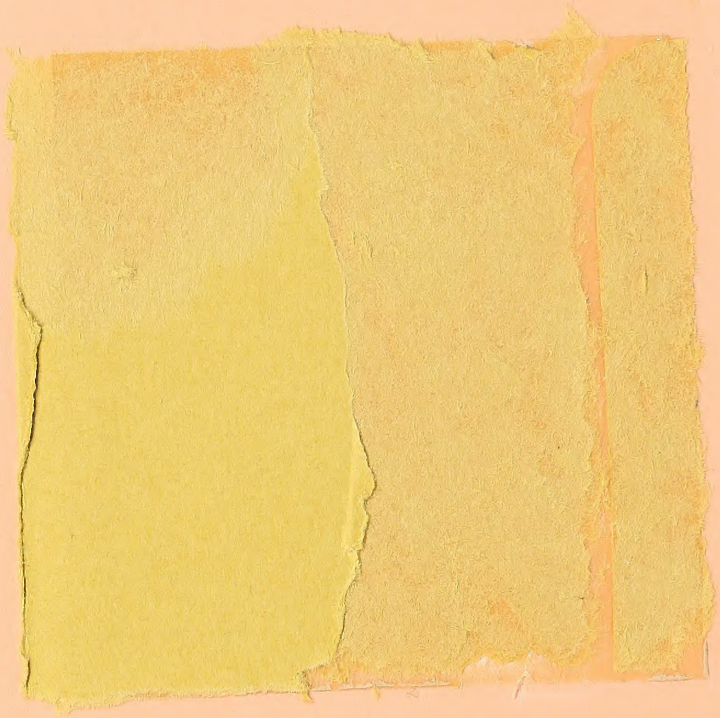
JANUARY-DECEMBER 1972



UNITED STATES DEPARTMENT OF THE INTERIOR

Secretary of the Interior Rogers C. B. Morton

Office of Hearings and Appeals - - James M. Day, Director

Office of the Solicitor- - - - Mitchell Melich, Solicitor

INDEX-DIGEST

JANUARY - DECEMBER 1972

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 30, 1972, rendered in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203 and in the Office of the Solicitor, Interior Building, Washington, D. C. 20240.

Decisions and opinions cited as appearing in 79 I.D are published and copies may be obtained by subscription from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. Other decisions and opinions are unpublished and copies may be obtained from the Office of Hearings and Appeals or the Office of the Solicitor as provided in 43 CFR Part 2.

Editor: V. E. Burgin; Compositors: H.D. Myers and Annis Olsen --1973

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SYMBOLS

IBCA	- Interior Board of Contract Appeals
IBIA	- Interior Board of Indian Appeals
IBLA	- Interior Board of Land Appeals
IBMA	- Interior Board of Mine Operations Appeals
M	- Solicitor's Opinion

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Robert K. Foster, et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S.D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D. N.M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co., et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, August 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer, et al., A-29221 (April 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton, et al., Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, November 14, 1972.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall, et al., Civil No. 2818 ND, S.D. Cal. Dismissed with prejudice, February 15, 1967; aff'd., 396 F. 2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 219-61. Judgment for defendant, December 1, 1961; aff'd., 315 F. 2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (October 28, 1965)

Bernard J. & Myrle A. Gaffney v. Stewart L. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, January 17, 1969; no appeal.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil No. 4194-60. Judgment for plaintiff, November 27, 1961; no appeal.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice December 16, 1963.

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, August 3, 1961; aff'd., 309 F. 2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (April 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, January 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D. N.M. Judgment for defendant, June 4, 1964; aff'd., 352 F. 2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (March 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378, D. N.M. Dismissed with prejudice, November 12, 1963.

John Gonzales, A-30604 (September 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alas. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, November 30, 1972.

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw, et al. v. Secretary, Civil No. 68-317, W.D. Okla. Dismissed, February 4, 1969; no appeal.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, October 19, 1962; aff'd., 325 F. 2d 633 (1963); no petition.

Gustav Hirsch Organization, Inc., IBCA-175 (October 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955), IBCA-22 (Supp.) (March 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed September 11, 1958.

Compromised offer accepted and case closed October 10, 1958.

L. H. Hagood, et al., 65 I.D. 405 (1958)

Edwin Still, et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

William Hall, et al., A-30849, A-30852, A-30857 (September 16, 1968)

William Hall & Diana Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alas. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (September 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N.D. Cal. Judgment for defendant, December 13, 1963 (opinion); judgment entered February 11, 1964; appeal docketed February 14, 1964; dismissed by plaintiff, March 20, 1964.

Raymond J. Hansen, et al., 67 I.D. 362 (1960)

Raymond J. Hansen, et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (March 5, 1965)

Mary L. Brandt and Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S.D. Cal. Dismissed, September 30, 1965; amended complaint filed November 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, November 15, 1967; judgment for defendants, March 26, 1968; rev'd., 427 F. 2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S.D. Cal. Dismissed, December 3, 1965.

Paul Harvey, et al., A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest and Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D. N.M. Judgment for defendant, January 25, 1967; aff'd., 384 F. 2d 883 (10th Cir. 1967); no petition.

Kenneth Holt, an individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; Per curiam decision, aff'd., April 28, 1966; no petition.

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965), U.S. v. Ollie Mae Shearman, et al. - Idaho Desert Land Entries - Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed, et al. v. Dept. of the Interior, et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, September 3, 1965; dismissed, November 10, 1965; amended complaint filed, September 11, 1967.

U.S. v. Raymond T. Michener, et al., Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp., et al., Civil No. 1-67-97, S.D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; appeal docketed February 9, 1971.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, March 27, 1968.

J. A. Jones Construction Co., et al., IBCA-233 (June 17, 1960)

Palisades Contractors, et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F. 2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen, et al., IBCA-363 (March 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W.D. Wash. Judgment for defendant, February 24, 1964; no appeal.

Dale Johnson, A-30806 (September 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alas. Stipulated dismissal, April 10, 1969; no appeal.

Kenneth J. Kadow, et al., A-30053 (October 5, 1964)

Kenneth J. Kadow, et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alas. Judgment for defendant, September 7, 1967; dismissed for lack of prosecution, February 2, 1968; no petition.

R. A. Keans, A-30183 (February 16, 1965)

R. A. Keans v. Stewart L. Udall, et al., Civil No. 2648-ND, S.D. Cal. Defendant's motion to dismiss granted, November 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (September 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W.D. Okla. Aff'd., 265 F. Supp. 848 (1967); aff'd., 404 F. 2d 97 (10th Cir. 1968); no petition.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., and Case-Pomeroy Corp., 6 IBLA 108 (1972), Petition for Reconsideration pending

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton, et al., Civil No. 616-72. Suit pending.

John J. King, A-28543 (October 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, November 8, 1961; rev'd., 308 F. 2d 650 (1962); no petition.

John J. King, et al., Fairbanks 033268, 033279 (September 25, 1964)

John J. King, et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs and all other parties.

John J. King, Dorothy W. King, Fairbanks 034577 (October 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alas. Dismissed with prejudice, April 24, 1968.

Barbara G. Kirk and Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (April 26, 1963), Barbara G. Kirk and Marjorie G. Wright, A-30022 (August 20, 1963)

George M. Larsen, et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Anquita L. Kluenter, et al., A-30483, (November 18, 1965)
See Bobby Lee Moore, et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser and Leo J. Kottas v. Stewart L. Udall, et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd., 432 F. 2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (December 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall, et al., Civil No. 6567, D. Ariz. Judgment for defendant, January 6, 1970; no appeal.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific R.R., A-29121 (January 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R.R. v. Udall, et al., Civil No. 67-14, D. Ore. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd., 432 F. 2d 254 (9th Cir. 1970); no petition.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, March 6, 1963; aff'd., 324 F. 2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

Langdon H. Larwill, et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd., 406 F. 2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F. 2d 782 (1969); no petition.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, October 5, 1964; appeal voluntarily dismissed, March 26, 1965.

Perley M. Lewis and Mildred C. Lewis, A-28707 (December 30, 1963)

Perley M. Lewis, et ux. v. Stewart L. Udall, et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, March 22, 1966; aff'd., 374 F. 2d 180 (9th Cir. 1967); no petition.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd., 427 F. 2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Milton H. Lichtenwalner, et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alas. Dismissed on merits, April 24, 1964; stipulated dismissal of appeal with prejudice, October 5, 1964.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co., et al. v. Stewart L. Udall, Civil No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall & Property Management Co. v. Udall, Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain which see. Stipulated dismissal on appeal, October 13, 1966.

Merwin E. Liss, et al., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; per curiam dec., aff'd., April 28, 1966; no petition.

Leland M. Lucas, A-29228 (December 10, 1962)

Leland Murray Lucas v. Stewart L. Udall, et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, October 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W.D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, 1 IBIA 46 (1970)

Eunice Lucero Vaile v. Rogers C. B. Morton, et al., Civil No. 9585, D. Wash. Judgment for defendant, January 14, 1972; appeal docketed January 14, 1972.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey, et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, December 10, 1970; no appeal.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71. Suit pending.

Sheridan L. McGarry, A-28759 (January 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 no petition.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, February 14, 1968; aff'd., 418 F. 2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow and Successor in Interest of Patrick A. McKenna, Deceased v. Walter J. Hickel, Secretary of the Interior, et al., Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9433, D. Ore. Judgment for plaintiff, 178 F. Supp. 913 (1959); rev'd., 289 F. 2d 908 (9th Cir. 1961).

Estate of Alvina Beauvois McLean, IA-D-27 (February 14, 1969), IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel, Secretary of the Interior, Civil No. 2721-69, D. C. Judgment for defendant, March 13, 1970; dismissed for lack of prosecution, April 9, 1971.

Wade McNeil, et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); rev'd., 281 F. 2d 931 (1960); no petition.

Wade McNeil v. Albert K. Leonard, et al., Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); order, April 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No. 678-62. Judgment for defendant, December 13, 1963 (opinion); aff'd., 340 F. 2d 801 (1964); cert. denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (April 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont. Judgment for defendant, February 6, 1969 (opinion); no appeal.

Appeal of Roy L. Matchett, IBCA-826-2-70 (February 26, 1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Suit pending.

Billy Mathis, et al., A-30512 (July 6, 1966)

Billy Mathis, et al. v. Stewart L. Udall, et al., Civil No. 6833, D. N.M. Dismissed with prejudice, January 6, 1967; rendered moot by P.L. 89-365.

Ralph E. May, A-29014 (January 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, March 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, February 8, 1967.

Allan E. Mecham, et al., A-30244 (December 23, 1964)

Allan E. Mecham, et al. v. Stewart L. Udall, et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd., 369 F. 2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, November 16, 1959; motion for reconsideration denied, December 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tuc., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered September 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Suit pending.

Donald E. Miller, 2 IBLA 309 (1971)

Donald E. Miller v. Walter J. Hickel, et al., Civil No. C-70-2328, D. Cal. Suit pending.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, February 23, 1961; aff'd., 307 F. 2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia and Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (August 10, 1959), A-28093 et al. (October 30, 1959), A-28133 (December 22, 1959), A-28378 (August 5, 1960), A-28258 et al. (February 10, 1960).

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28057 (October 16, 1959), A-28398 (August 31, 1960), A-28359 (July 18, 1960), A-28433 (August 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (March 31, 1959), A-27810 (January 16, 1959).

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, April 4, 1963; aff'd., per curiam dec., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28528 et al. (February 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28509 (October 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (February 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (January 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, September 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (January 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for defendant, November 21, 1962 (opinion); appeal dismissed April 12, 1963.

Duncan Miller, A-28937 (September 25, 1962), A-29041 (November 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May, 1966.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (August 29, 1963), and A-29633 (September 5, 1963).

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, October 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, April 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (March 5, 1964), A-30067 (March 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (April 8, 1964), A-30192 (April 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, September 28, 1965; no appeal.

Duncan Miller, A-30122 (September 23, 1964), A-30451 (November 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, February 15, 1966; dismissed, April 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, November 15, 1965; aff'd., 368 F. 2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, October 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed April 12, 1968; petition for mandamus denied, October 14, 1968.

Duncan Miller, A-30517 (April 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, August 11, 1966; appeal dismissed, September 14, 1967.

Duncan Miller, A-30570 (August 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alas. Judgment for defendant, March 13, 1967; motion for reconsideration denied, September 19, 1967; no appeal.

Duncan Miller, A-30546 (August 10, 1966), A-30566 (August 11, 1966), and 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, April 17, 1967; no appeal.

Duncan Miller, A-29231 (February 5, 1963) See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (November 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, April 25, 1969; no appeal.

Duncan Miller, A-30628 (November 16, 1966), A-30684 (January 19, 1967), A-30708 (November 16, 1966), A-30797 (September 12, 1967)

Duncan Miller v. Secretary of the Interior and his officers, Civil No. 7334, D. N.M. Dismissed with prejudice, August 28, 1968; motion to set aside judgment denied, September 24, 1968; motion for reconsideration denied, November 4, 1968.

Duncan Miller, A-30891 (March 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, October 14, 1968; no appeal.

Duncan Miller, A-30924 (November 13, 1968), A-30934 (November 22, 1968), A-30966 (October 29, 1968), A-31054 (August 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, January 6, 1972; motion for reconsideration denied, February 7, 1972.

Duncan Miller, A-31087 (February 4, 1970), A-31095 (February 2, 1970), A-31148 (March 2, 1970), A-31159 (March 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, January 4, 1971; no appeal.

Duncan Miller, 6 IBLA 283 (1972), 6 IBLA 507 (1972), 7 IBLA 343 (1972)

Duncan Miller v. Adjucative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Suit pending.

Duncan Miller, IBLA 72-462 (appeal pending), IBLA 73-24 (appeal pending)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Suit pending.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan, et al. v. Warren J. Gray, et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, November 13, 1967; aff'd., 413 F. 2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough, et al., Civil No. C-200-63, D. Utah. Judgment for defendant, January 8, 1964; no appeal.

Bobby Lee Moore, et al., 72 I.D. 505 (1965)
Anquita L. Kluenter, et al., A-30483 (November 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration, et al., Civil No. 3253 S.D. Cal. Judgment for defendant, April 12, 1965; aff'd., 377 F. 2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan, et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, February 20, 1961 (opinion); aff'd., 306 F. 2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r., 345 F. 2d 833 (1965); Commr's. report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F. 2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on October 6, 1969; judgment for plaintiff, February 17, 1970.

Glenn Munsey, Earnest Scott, & Arnold Scott v. Smitty Baker Coal Co., 1 IBMA 208 (1972)

Glenn Munsey, Arnold Scott, & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-2095, United States Court of Appeals for the District of Columbia Circuit. Suit pending.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (October 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alas. Judgment for defendant, September 17, 1965; aff'd., 385 F. 2d 177 (9th Cir. 1967); no petition.

Leonard E. Noren, A-27583 (September 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, September 17, 1965; rev'd. & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren, et al., rev'd. & remanded, 370 F. 2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Commr's. report adverse to U.S. issued December 10, 1971; judgment for plaintiff, 458 F. 2d 64 (1972).

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, November 15, 1963; case reinstated, February 19, 1964; remanded, April 4, 1967; rev'd. & remanded with directions to enter judgment for appellant, 389 F. 2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Oil and Gas Leasing on Lands Withdrawn by Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alas. Withdrawn April 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alas. Dismissed, April 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alas. Dismissed, October 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alas. Dismissed, October 29, 1963 (oral opinion); aff'd., 332 F. 2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alas. Dismissed without prejudice, March 2, 1964; no appeal.

Joseph I. O'Neill, Jr., A-30488 (April 19, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of Departmental decision, March 8, 1967; no appeal.

Eugene C. Paine, et al., A-27632 (August 21, 1958)

Eugene C. Paine, et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, September 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, January 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd. & remanded, February 23, 1961; judgment for defendant, March 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (September 21, 1962)

Irene Mitchell Pallin v. U.S., & Edward Elmer Mitchell, Jr., Civil No. 47552, N.D. Cal. Judgment for plaintiff, December 16, 1970; appeal docketed February 12, 1971.

Pan American Petroleum Corp., IA-840 (December 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent administrative appeal & supplemental complaint filed; judgment for plaintiff, February 16, 1966; no appeal.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, December 19, 1958.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F. 2d 722 (1970).

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don & Winona James v. Mabel George Gomez, et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, September 1, 1970.

M. Blaine Peterson, A-28111 (November 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, November 13, 1961; no appeal.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1958)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F. 2d 793 (1968).

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, August 2, 1962; aff'd., 317 F. 2d 573 (1963); no petition.

Platte Valley Construction Co., IBCA-168 (August 28, 1958)

George Stanek, et al. v. U.S., Ct. Cl. 189-62. Compromised.

John M. Pomeroy, A-28134 (January 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, August 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, December 7, 1964.

Property Management Co., A-29144 (August 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

R. E. Puckett, A-30419 (October 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, August 15, 1966.

Ethel C. Radzewicz, et al., A-30866 (January 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, October 30, 1969; dismissed, November 17, 1970.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, December 13, 1968; subsequent Contract Officer's dec., December 3, 1969; interim dec., December 2, 1969; Order to Stay Proceedings until March 31, 1970; dismissed with prejudice, August 3, 1970.

Estate of Elgin Red Elk, IA-1230 (November 13, 1964)

Bert Taunah, et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, April 27, 1967; rev'd. & remanded, 398 F. 2d 795 (10th Cir. 1968); no petition.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326; 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton, et al., Civil No. 1105, D. Mont. Suit pending.

Reliable Coal Corp., 1 IBMA 97; 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-1417, United States Court of Appeals for the Fourth Circuit. Suit pending.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, April 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, March 6, 1958; no appeal.

Mark B. Ringstad, et al., Inlet Oil Corp., et al., Robert L. Lawler, et al., A-31111, A-31115, A-31134, A-31118 (March 17, 1970)

Robert Lawler, et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alas.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alas. Stipulated dismissal without prejudice, August 11, 1970.

Actions consolidated, June 26, 1970. Judgment for defendant, February 22, 1972; no appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965), Reconsideration denied by letter decision dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Estate of William Cecil Robedeaux, 1 IBIA 106; 78 I.D. 234 (1971)

Oneta Lamb Robedeaux, et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Suit pending.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Suit pending.

Evelyn R. Robertson, et al., Duncan Miller, A-29251 (March 21, 1963)

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, March 13, 1964; aff'd., 349 F. 2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alas. Dismissed with prejudice, September 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, April 4, 1964; aff'd., 349 F. 2d 195 (1965); no petition.

Edgar Rundle, A-29593 (August 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, September 22, 1965; aff'd., 379 F. 2d 112 (1967); cert. denied, 389 U.S. 845 (1967).

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Louise Safarik, et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd., sub nom. S. Jack Hinton, et al. v. Stewart L. Udall, 364 F. 2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, November 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12, 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D. N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed January 12, 1966; order vacating prior judgment issued January 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (April 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen, et al., Civil No. 7135, D. N.M. Summary judgment for defendant, May 28, 1968; no appeal.

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D. Colo. Suit pending.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (August 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, April 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (January 8, 1964). Reconsideration denied, March 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (November 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, October 31, 1968; aff'd., 419 F. 2d 663 (1969); petition for rehearing en banc denied, October 8, 1969; no petition.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, December 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, January 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, March 19, 1962; no appeal.

Seal and Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, January 31, 1964; no appeal.

John W. Shaw, A-29143 (April 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. Aff'd., 264 F. Supp. 390 (1967); appeal docketed March 13, 1967; appeal dismissed.

Shell Oil Co., A-30575 (October 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal, August 19, 1968.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd., 432 F. 2d 587 (10th Cir. 1970); no petition.

Eldon L. Smith, A-30944 (October 15, 1968)

D. L. Hannifin v. Walter J. Hickel, et al., Civil No. 8074, D. N.M. Judgment for defendant, January 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; aff'd., 440 F. 2d 200 (10th Cir. 1971); no petition.

Eldon L. Smith, A-30944 (October 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, February 3, 1970.

L. B. Smith, et al., A-30447 (October 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Stanley C. Soho, A-28135 (August 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated February 1, 1963, by Director, Bureau of Land Management, approved by the Secretary March 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, September 3, 1963; aff'd., 336 F. 2d 706 (9th Cir. 1964); cert. denied 381 U.S. 904 (1965).

Stanley C. Soho, et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, January 17, 1961; no appeal.

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, December 2, 1970 (opinion); no appeal.

Southport Land & Commercial Co., Sacramento 075330 (January 15, 1964)

Southport Land & Commercial Co. v. Stewart Udall, et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd., 371 F. 2d 526 (9th Cir. 1967); no petition.

Southwest Welding and Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, January 14, 1970; appeal dismissed, April 6, 1970.

Southwestern Petroleum Corp., et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D. N.M. Judgment for defendant, March 8, 1965; aff'd., 361 F. 2d 650 (10th Cir. 1966); no petition.

Standard Oil Co. of California, et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel, et al., Civil No. A-159-69, D. Alas. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd., sub nom. Standard Oil Co. of California v. Rogers C. B. Morton, et al., 450 F. 2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D. N.M. Judgment for plaintiff, January 21, 1965; no appeal.

Starling Brokers, et al., 6 IBLA 237 (1972)

Hillin L. Arnold, et al. v. Rogers C. B. Morton, et al., Civil No. A-157-72 Civ., D. Alas. Suit pending.

Ross Stegman, A-30812 (November 21, 1967)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, December 12, 1969.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (November 10, 1966)

Amanda Price v. Udall, Civil No. 33-67, D. Alas. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F. 2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman, et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, November 1, 1962 (opinion); rev'd., 324 F. 2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist. Ct. aff'd., 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Texaco, Inc., 75 I.D. 8 (1968)

Texaco, Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); aff'd. in part & remanded, 437 F. 2d 636 (1970); aff'd. in part & remanded, July 19, 1972.

Texas Construction Co., 64 I.D. 97 (1957) Reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, December 14, 1961.

Estate of John Thomas, Deceased Cayuse Allottee No. 223 and Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, September 18, 1958; aff'd., 270 F. 2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D. N.M. Dismissed with prejudice June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, et al., Civil No. 2406-61. Judgment for defendant, March 22, 1962; aff'd., 314 F. 2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd, et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd., 350 F. 2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood, et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962; aff'd., 350 F. 2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, September 17, 1963; no appeal.

Tree Land Nursery, Inc., IBCA-436 (October 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

Tyee Construction Co., IBCA-112 and 113 (April 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968), 76 I.D. 69 (1969)

The Superior Oil Co., et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd., 409 F. 2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd., 289 F. 2d 790 (1961); no petition.

Union Oil Company of California et al., 71 I.D. 169 (1964), 72 I.D. 313 (1965)

Penelope Chase Brown, et al. v. Stewart Udall, Civil No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971.

Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Harlan H. Hugg, et al. v. Stewart L. Udall, Civil No. 9252, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Barnette T. Napier, et al. v. Secretary of the Interior, Civil No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971.

John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

The Oil Shale Corp., et al. v. Secretary of the Interior, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971.

The Oil Shale Corp., et al. v. Stewart L. Udall, Civil No. 9465, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971.

Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, December 27, 1965; no appeal.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming and Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd., 379 F. 2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).

U.S. v. Alonzo A. Adams, et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams, et al. v. Paul B. Witmer, et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, November 27, 1957 (opinion); rev'd. & remanded, 271 F. 2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (9th Cir. 1959).

U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, January 29, 1962 (opinion); judgment modified, 318 F. 2d 861 (9th Cir. 1963); no petition.

U.S. v. Arizona Exploration Co., et al., A-28876 (June 22, 1962)

Blaine J. Lord, et al. v. Roy T. Helmandollar, et al., Civil No. 987-63. Judgment for defendants, September 30, 1963; appeal dismissed, 348 F. 2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

U.S. v. E. A. Barrows and Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an individual and as Executrix of the Last Will of E. A. Barrows, deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, April 20, 1970; aff'd., 447 F. 2d 80 (9th Cir. 1971).

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alas. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, August 19, 1964 (opinion); no appeal.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969), Reconsideration denied (January 22, 1970).

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; appeal docketed June 5, 1972.

U.S. v. Calhoun & Howell of Oregon, Ltd., U.S. v. Lee Temple, A-31004 (August 29, 1969)

Calhoun & Howell of Oregon, Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Ore. Judgment for defendant, September 24, 1970; no appeal.

U.S. v. John C. Chapman, et al., A-30581 (July 16, 1968)

John C. Chapman, et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, January 18, 1972; no appeal.

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, January 9, 1962; no appeal.

Nick Chournos, et al. v. U.S., et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd., 335 F. 2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, April 4, 1960; no appeal.

U.S. v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, January 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, December 6, 1971; appeal withdrawn, March 10, 1972.

U.S. v. Alfred Coleman, A-28557 (March 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, February 25, 1965 (opinion); remanded, 363 F. 2d 190 (9th Cir. 1966); aff'd., 379 F. 2d 555 (9th Cir. 1967); cert. granted, 389 U.S. 970 (1967); rev'd. and remanded to 9th Circuit, 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd., 405 F. 2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd., 399 F. 2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Jesse W. Crawford, A-30820 (January 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. Alvis F. Denison, et al., 71 I.D. 144 (1964), 76 I.D. 233 (1969)

Marie W. Denison, individually & as executrix of the Estate of Alvis F. Dension, deceased v. Stewart L. Udall, Civil No. 963, D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, January 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, January 31, 1972; appeal docketed March 28, 1972.

U.S. v. J. S. Devenny, A-30289 (August 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (April 28, 1965), 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, September 10, 1969; decision of BLM dated January 16, 1970 aff'd. by the Board of Land Appeals, May 10, 1971.

U.S. v. Francis Dlouhy, et al., A-27668 (September 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, November 28, 1960.

U.S. v. The Dredge Corp., A-28022 (December 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir. 1964); judgment for plaintiff, August 8, 1966; judgment for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. Maurice Duval, et al., 1 IBLA 103 (1970)

Maurice Duval, et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Ore. Dismissed, August 23, 1972; appeal docketed September 19, 1972.

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Suit pending.

U.S. v. Ralph Fairchild, A-30803 (January 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971).

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, November 23, 1970.

U.S. v. Everett Foster, et al., 65 I.D. 1 (1958)

Everett Foster, et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, December 5, 1958 (opinion); aff'd., 271 F. 2d 836 (1959); no petition.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd., 405 F. 2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864 (September 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, October 6, 1969; no appeal.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Suit pending.

U.S. v. Richard P. Haskins, A-30737 (December 19, 1966), 3 IBLA 77 (1971)

Richard P. Haskins for himself & as Admin. of the Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, April 15, 1968; remanded to the Director, Bureau of Land Management for an exercise of discretion, October 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; appeal docketed August 23, 1972.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk, et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd. & remanded for further proceedings, 419 F. 2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, October 6, 1970.

U.S. v. Charles H. Henrikson, et al., 70 I.D. 212 (1963)

Charles H. Henrikson, et al. v. Stewart L. Udall, et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd., 350 F. 2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks, et al., A-30780 (October 24, 1967)

Taylor T. Hicks, et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Judgment for defendant, March 26, 1970.

U.S. v. Ernest Higbee, et al., A-31063 (April 1, 1970)

Ernest Higbee, et al. v. Rogers C. B. Morton, et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; appeal docketed June 26, 1972.

U.S. v. Ideal Cement Co., 5 IBLA 235 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alas. Suit pending.

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. R. B. Johnson, A-30405 (October 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, November 21, 1967; no appeal.

U.S. v. Robert N. Johnson, et al., A-30828 (January 29, 1968)

Robert N. Johnson, et al. & Thelma A. Johnson as individ. & as Executrix of Nolan F. Fultz estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912 (May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, November 13, 1970.

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298 (1972)

Charles W. & Cora A. Kohl v. Steve Yurich, & Rogers C. B. Morton, et al., Civil No. 2155, D. Mont. Suit pending.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall, et al., Civil No. 1864, D. Nev. Judgment for defendant, January 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (March 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Ore. Judgment for defendant, February 2, 1970.

U.S. v. Charles Maher, et al., 5 IBLA 209; 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Suit pending.

U.S. v. Mary A. Mattey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira, et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, November 16, 1966; rev'd. & remanded, 403 F. 2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall, et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, December 15, 1969.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964), 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall, et al., Civil No. 2116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd. & remanded, 408 F. 2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, August 13, 1969.

U.S. v. Frank & Wanita Melluzzo, et al., 76 I.D. 181 (1969), Reconsideration, 1 IBLA 37; 77 I.D. 172 (1970)

WJM Mining & Development Co., et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, December 8, 1971; appeal docketed January 31, 1972.

U.S. v. Ernest Evon Moseley, A-30971 (December 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, February 19, 1963 (opinion); aff'd., 326 F. 2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Suit pending.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, November 28, 1966; no appeal.

U.S. v. New Jersey Zinc Company, 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, January 5, 1970.

U.S. v. Wilma L. Oldaker, A-30378 (August 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alas. Stipulated dismissal with prejudice, March 3, 1967; no appeal.

U.S. v. J. R. Osborne, et al., 77 I.D. 83 (1970)

J. R. Osborne, individually & on behalf of R.R. Borders, et al. v. Rogers C. B. Morton, et al., Civil No. 1564, D. Nev. Judgment for defendant, March 1, 1972; appeal docketed April 27, 1972.

U.S. v. Richard C. Porter, et al., A-29882 (April 24, 1964)

Hal W. Eldridge, et al. v. Secretary of the Interior, Civil No. 64-353, D. Ore. Judgment for defendant, December 15, 1965 (opinion); no appeal.

U.S. v. E. V. Pressentin, et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin, et al. v. Fred A. Seaton, Civil No. 1907-59. Judgment for defendant, January 15, 1960; rev'd. & remanded, 284 F. 2d 195 (1960); see A-30004, 71 I.D. 447 (1964).

U.S. v. E. V. Pressentin and Devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall & Charles Stoddard, Civil No. 1194-65. Judgment for defendant, March 19, 1969; no appeal.

U.S. v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F. 2d 615 (1965); judgment for defendant, January 4, 1966; per curiam dec., remanded for transfer to Dist. Ct. for Oregon. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Ore. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd., 410 F. 2d 750 (9th Cir. 1969); cert. denied, 396 U.S. 967 (1969); rehearing denied, 397 U.S. 1003 (1970).

U.S. v. William D. Pulliam et al., 1 IBLA 143 (1970)

William D. Pulliam, et al. v. Secretary of the Interior, Civil No. 71-649, D. Ariz. Suit pending.

U.S. v. Cecil R. Reed, A-30354 (September 29, 1965)

Cecil R. Reed v. Stewart L. Udall, et al., Civil No. 1784, D. Nev. Judgment for defendant, December 19, 1967; aff'd., 416 F. 2d 377 (9th Cir. 1969); cert. denied, 397 U.S. 924 (1970).

U.S. v. George A. and Dorothy Relyea, A-30909 (June 25, 1968)

George A. & Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Judgment for defendant, February 19, 1970; no appeal.

U.S. v. Amos D. & Lena S. Robinette, A-31036, A-31133 (March 4, 1970)

Amos D. Robinette v. Rogers C. B. Morton, et al., Civil No. 71-1156-HP, C.B. Cal. Complaint dismissed with prejudice, October 22, 1971; appeal dismissed, April 18, 1972.

U.S. v. Robert B. Sainberg, 5 IBLA 270 (1972)

Robert B. Sainberg, Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely v. Rogers C. B. Morton, Civil No. 72-217-PCT, D. Ariz. Suit pending.

U.S. v. Edwin R. Saurers, et al., A-30097 (July 9, 1964)

Edwin R. Saurers, et al. v. Stewart L. Udall, Civil No. 6245, W.D. Wash. Judgment for defendant, July 19, 1965; no appeal.

U.S. v. Charles L. Seeley, et al., A-28127 (January 28, 1960)

Charles L. Seeley, et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, December 16, 1964.

U.S. v. Ollie Mae Shearman et al., 73 I.D. 386 (1966)
See Idaho Desert Land Entries - Indian Hill Group.

U.S. v. Thomas R. Shuck, A-27965 (February 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, December 7, 1961; no appeal.

U.S. v. Silverton Mining & Milling Co., IBLA-70-22 (September 23, 1970)

Multiple Use Inc. v. Rogers C. B. Morton, Civil No. 71-211, D. Ariz. Judgment for defendant, November 8, 1972; appeal docketed December 28, 1972.

U.S. v. C. F. Snyder, et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'r[x] of the Estate of C. F. Snyder, Deceased, et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967); rev'd., 405 F. 2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., 77 I.D. 41 (1970)

Southern Pacific Co., et al. v. Rogers C. B. Morton, et al., Civil No. S-2155, E.D. Cal. Suit pending.

U.S. v. Clarence T. & Mary D. Stevens, 77 I.D. 97 (1970)

Clarence T. & Mary D. Stevens v. Walter J. Hickel, Civil No. 1-70-94, D. Idaho. Judgment for defendant, June 4, 1971.

U.S. v. Charles E. Stewart, A-28966 (September 25, 1962)

Charles E. Stewart v. Gordon Penny, et al., Civil No. 1619, D. Nev. Judgment for plaintiff, 238 F. Supp. 821 (1965); no appeal.

U.S. v. U.S. Silica Corp., et al., A-30400 (August 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, September 26, 1969; no appeal.

U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

Alfred N. Verrue v. U.S., et al., Civil No. 6898 Phx., D. Ariz. Rev'd. & remanded, December 29, 1970; aff'd., 457 F. 2d 1202 (9th Cir. 1971); no petition.

U.S. v. Kenneth O. Watkins & Harold E. L. Barton, A-29862 (April 24, 1966), A-30659 (October 19, 1967)

Harold E. L. Barton v. Stewart L. Udall, Secretary of the Interior & U.S., Civil No. 69-26, D. Ore. Judgment for defendant, March 17, 1971; appeal docketed, May 20, 1971.

U.S. v. Oscar W. Weiss, et al., A-30809 (September 14, 1967), IBLA-71-250 (Still pending)

Oscar W. Weiss v. Stewart L. Udall, Civil No. C-882, D. Colo. Remanded, January 2, 1969.

U.S. v. Thomas C. Wells, A-30805 (January 8, 1968), A-30805 (Supp.) (April 25, 1969), A-30805 (Supp. II) (November 17, 1969)

Thomas C. Wells v. Udall, Civil No. S-693, E.D. Cal. Remanded to Secretary, December 12, 1968; remanded to Bureau of Land Management. Time extended to November 1, 1970 to comply with requirements of Supp. II. Judgment for defendant, December 17, 1970.

U.S. v. Vernon O. & Ina C. White, 72 I.D. 522 (1965)

Vernon O. White & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment for defendant, January 6, 1967; aff'd., 404 F. 2d 334 (9th Cir. 1968); no petition.

U.S. v. Rodney Wood, et al., A-30697 (May 31, 1967)

Rodney Wood, et al. v. Stewart L. Udall, Secretary of the Interior, & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, November 7, 1967; amended complaint filed; judgment for defendant, March 27, 1969; no appeal.

United Technical Industries, Inc., A-29406 (April 24, 1963)

Jay Nielson v. J. E. Keough, et al., Civil No. C-158-63, D. Utah. Dismissed July 13, 1964 (opinion); no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (September 21, 1966)

Paul E. Unruh v. Udall, et al., Civil No. 1894-N, D. Nev. Judgment for defendant, June 14, 1967; no appeal.

Utah Power & Light Co., 4 IBLA 62 (1971)

Utah Power & Light Co. v. Rogers C. B. Morton, et al., Civil No. C-5-72, D. Utah. Dismissed with prejudice, November 3, 1972; appeal docketed November 30, 1972.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil No. 1744-56. Dismissed by stipulation, April 18, 1957; no appeal.

Estate of Florence Bluesky Vessell (Unallotted Lac Courte Oreilles Chippewa of Wisconsin), 1 IBIA 312; 79 I.D. 615 (1972)

Constance Jean Hollen Eskra v. Rogers C. B. Morton, et al., Civil No. 72-C-428, D. Wis. Suit pending.

Burt A. Wackerli, et al., 73 I.D. 280 (1966)

Burt & Lueva G. Wackerli, et al. v. Stewart L. Udall, et al., Civil No. 1-66-92, D. Idaho. Amended complaint filed March 17, 1971.

Estate of Amelia Keyes Abbott Viramontes Walker, IA-1339 (April 5, 1966)

Earlene Ida Abbott Simons v. Udall, et al., Civil No. 2640, D. Mont. Judgment for defendant, 276 F. Supp. 75 (1967); no appeal.

Jack A. Walker, A-30492 (April 28, 1966)

Jack A. Walker v. U.S. & Udall, Civil No. 1-66-80, D. Idaho. Judgment for plaintiff, July 3, 1967; rev'd., 409 F. 2d 477 (9th Cir. 1969); no petition.

Wasatch Development Co., et al., A-28674 (May 16, 1963)

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8156, D. Colo. Judgment for defendant, 285 F. Supp. 25 (1968); no appeal.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. U.S., Civil No. 278-59-PH, S.D. Cal. Judgment for plaintiff, October 26, 1959; satisfaction of judgment entered February 9, 1960.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83; 78 I.D. 179 (1971)

William T. Shaw, Jr., et al. v. Rogers C. B. Morton, et al., Civil No. 974, D. Mont. Suit pending.

Lucille S. West, Duncan Miller, et al., A-29242 et al. (February 25, 1963), Duncan Miller, A-29231 (February 5, 1963)

Cecil H. Phillips, et al. v. Stewart L. Udall, Civil No. 847-63. Dismissed on behalf of all except Lucille S. West; judgment for defendant, February 25, 1964; no appeal.

Estate of John P. Whitetail, IA-T-23 (April 17, 1970)

Doris Ann Whitetail Parker, et al. v. John Pappan, et al., Civil No. 70-C-373, D. Okla. Suit pending.

Estate of Louise Wilson, IA-1380 (March 1, 1966)

Charles W. Heffelman v. Stewart L. Udall, Civil No. 6402, N.D. Okla. Dismissed June 16, 1966; aff'd., 378 F. 2d 109 (10th Cir. 1967); cert. denied, 389 U.S. 926 (1967).

Buck Willcoxson, A-27402, A-27403 (December 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil No. 3596, D. N.M. Motion of plaintiff to dismiss case without prejudice granted, December 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil No. 2029-58.

U.S. v. Buck Willcoxson et al., Civil No. 1492-59.

Buck Willcoxson v. U.S., Civil No. 972-59.

Actions consolidated. Judgment for defendant, plaintiff, & defendant, respectively, August 3, 1961; aff'd., 313 F. 2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

William F. Klingensmith, Inc., IBCA-717-5-68, IBCA-734-10-68 (May 4, 1971)

William F. Klingensmith, Inc. v. U.S., Civil No. 1287-71.

William F. Klingensmith, Inc. v. U.S., Civil No. 1288-71.

Actions consolidated and transferred to Court of Claims January 24, 1972; Ct. Cl. No. 28-72. Suit pending.

William A. Smith Contracting Co., IBCA-83 (July 16, 1959)

William A. Smith Contracting Co., et al. v. U.S., Ct. Cl. No. 264-57. Judgment for plaintiff, 292 F. 2d 847 (1961); no appeal.

William A. Smith Contracting Co. v. U.S., Ct. Cl. No. 279-59. Judgment for defendant, 292 F. 2d 854 (1961); no appeal.

Frank Winegar, Shell Oil Co. & D. A. Shale Inc., 74 I.D. 161 (1967)

Shell Oil Co., et al. v. Udall, et al., Civil No. 67-C-321, D. Colo. Judgment for plaintiff, September 18, 1967; no appeal.

W. L. Ridge Construction Co., IBCA-80 (November 30, 1960)

W. L. Ridge v. U.S., Ct. Cl. No. 301-60. Suit dismissed, October 1, 1963.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah, Deceased, Comanche Enrolled Restricted Indian No. 1927 v. Jane Asenap, Wilfred Tabbytite, J. R. Graves, Examiner of Inheritance, Bureau of Indian Affairs, Dept. of the Interior, & Earl R. Wiseman, District Director of Internal Revenue, Civil No. 8281,

W.D. Okla. Dismissed as to the Examiner of Inheritance; plaintiff dismissed suit without prejudice as to the other defendants.

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil No. 2595-60. Judgment for defendant, June 5, 1962; remanded, 312 F. 2d 358 (1962).

Young Associates, Inc., IBCA-557-4-66 (December 4, 1968)

Young Associates, Inc. v. U.S., Ct. Cl. 787-71. Judgment for defendant, January 18, 1973.

George W. Zarak, et al., Cardinal Petroleum Co., 4 IBLA 82 (1971)

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Elodymae Zwang, et al., A-30201 (February 3, 1965)

Darrell Zwang & Elodymae Zwang v. Stewart L. Udall, Civil No. 65-716-EC, S.D. Cal. Judgment for defendant, February 23, 1966; aff'd., 371 F. 2d 634 (9th Cir. 1967); no petition.

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* * * * * * * * * * * *

ACCOUNTS

GENERALLY

In determining the gross value of mineral concentrates as a basis for computing royalties due to the United States under a mineral lease which permits the deduction of costs and charges of smelting and refining such concentrates, the Government will not allow as a deduction a smelter deficiency payment consisting of the difference between a minimum quarterly tolling charge for processing concentrates prescribed under a tolling agreement between the lessee and the refiner and the total of the tolling charges applicable to each ton of concentrates actually processed during a calendar quarter, as the tolling agreement was a unique and special arrangement outside of the normal and usual business practices and the smelter deficiency payment was not contemplated by the United States when it issued the lease.

Dresser Industries, Inc. 6 IBLA 195 (June 19, 1972)

FEES AND COMMISSIONS

The regulations requiring that advance rental payment and filing fee must accompany the offer cannot be satisfied by a check returned by the bank as uncollectible; nor is a substitute check filed without adequate explanation sufficient to avert or reverse cancellation of the lease.

Charles F. Mullins, 6 IBLA 184 (June 15, 1972)

PAYMENTS

The regulations requiring that advance rental payment and filing fee must accompany the offer cannot be satisfied by a check returned by the bank as uncollectible; nor is a substitute check filed without adequate explanation sufficient to avert or reverse cancellation of the lease.

Charles F. Mullins, 6 IBLA 184 (June 15, 1972)

The failure of a mining claimant to make the required annual rental payments in advance for claims located under the Act of June 18, 1934, 48 Stat. 984, as amended, August 28, 1937, 50 Stat. 862, 863, within the Papago Indian Reservation is a sufficient basis for invalidating the claims where the annual rental payments were not remitted until almost three months after the due date and no explanation is offered for the delay.

I.M. and Robert L. Clausen, 7 IBLA 286 (Sept. 22, 1972)

Failure of a lessee to pay rental on or before the anniversary date of a lease, on which there is no well capable of producing oil or gas in paying quantities, results in the automatic termination of the lease by operation of law. A lease so terminated may be reinstated only if the terms and conditions of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970) have been satisfied.

James E. Fowler and Frances T. Fowler, 8 IBLA 372 (Dec. 12, 1972)

ACCRETION

Where, by the alteration of a river channel, the private land along the south bank was eroded away and the withdrawn federal land on the north bank was increased by accretion and, subsequently, the river made an avulsive return to its approximate original position, a class 1 application to purchase the accreted land under the Color-of-Title Act is properly rejected because the accreted land came under the influence of the withdrawal as it formed against the withdrawn land, and withdrawn land is not subject to the Color-of-Title Act.

Margaret C. More, 5 IBLA 252 (Mar. 23, 1972)

ACT OF JUNE 25, 1910

Where an application is filed for an Indian allotment for lands within a national forest, as provided by the Act of June 25, 1910, 25 U.S.C. §337 (1970), the Secretary of the Interior, before passing upon the entitlement of the applicant to the lands applied for, must first have received a determination by the Secretary of Agriculture that the lands are more valuable for agricultural and grazing purposes than for the timber found thereon.

Curtis D. Peters, 6 IBLA 5 (May 9, 1972)

ACT OF JUNE 18, 1934

The failure of a mining claimant to make the required annual rental payments in advance for claims located under the Act of June 18, 1934, 48 Stat. 984, as amended, August 28, 1937, 50 Stat. 862, 863, within the Papago Indian Reservation is a sufficient basis for invalidating the claims where the annual rental payments were not remitted until almost three months after the due date and no explanation is offered for the delay.

I.M. and Robert L. Clausen, 7 IBLA 286 (Sept. 22, 1972)

ACT OF AUGUST 2, 1946

An allocation of grazing privileges constitutes an act in performance of a discretionary function for which the federal government is immune from suit under the Federal Tort Claims Act, 28 U.S.C. § 2680(a) (1970).

Eldon L. Smith, 6 IBLA 166 (June 14, 1972)

ACT OF JUNE 30, 1950

The rejection of an application for a prospecting permit for lands within the exterior boundaries of a national forest in Minnesota, filed pursuant to the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), is properly reversed where the Geological Survey, upon reconsideration, determines that prospecting is needed to ascertain whether the land contains workable deposits of the minerals sought.

Lloyd K. Johnson, 8 IBLA 73 (Oct. 27, 1972)

ACT OF JULY 6, 1960

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for that purpose.

Frederick Siemon, 6 IBLA 156 (June 8, 1972)

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for the purpose.

Lester J. Gendron, 6 IBLA 288 (July 3, 1972)

ACT OF OCTOBER 8, 1964

Where the state director interprets the regulation which reserves to him the right to offer competitively a lease for any land applied for within the Lake Mead Recreation Area if, in his judgment, there is evidence of a competitive interest in the land, his decision that no lease would issue without competitive bidding will be affirmed if on appellate review it is found to be the conclusion which the Board would have reached independently.

Mark Systems, Inc., 5 IBLA 257 (Mar. 23, 1972)

Where applications for a mineral lease pursuant to the Act of October 8, 1964, 16 U.S.C. § 460(n) (1970), and alternatively, for the restoration of a portion of the same land from the first form of reclamation withdrawal to mineral entry and location pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1970), are both rejected on the basis of adverse recommendations by the Bureau of Reclamation, the decision will be affirmed where it appears that it was predicated upon a due regard for the public interest and constituted a proper exercise of discretionary authority.

George S. Miles, Sr., 7 IBLA 372 (Sept 29, 1972)

ACT OF JULY 9, 1965

Range improvement permits, issued pursuant to sec. 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315(m) (1970), may be canceled where the improvement would interfere with the range management practices determined by the Bureau of Land Management; where a management plan of the Bureau, developed for a project authorized under the Federal Water Project Recreation Act of July 9, 1965, 16 U.S.C. § 460 1-12, et seq. (1970), designates an area of public lands as a "roadless zone" for purposes of wildlife and recreational uses, it is proper for the Bureau to cancel an existing

ACT OF JULY 9, 1965--Continued

range improvement permit and deny an application for a similar permit which calls for the construction of roads in such zoned areas.

Mary A. Van Alen, 8 IBLA 77 (Oct. 27, 1972)

ACT OF OCTOBER 2, 1968

Lands which constitute the bed or bank are situated within a quarter mile of any river listed in sec. 5(a) of the Wild and Scenic Rivers Act as a potential addition to the wild and scenic river system are open to mineral leasing, subject to the discretion of the Secretary and to such conditions as he may impose.

Signal Oil & Gas Co., 8 IBLA 14 (Oct. 5, 1972)

Lands which constitute the bed or bank or are situated within a quarter mile of the bank of any river listed in sec. 5(a) of the Wild and Scenic Rivers Act as a potential addition to the wild and scenic river systems are open to mineral leasing, subject to the discretion of the Secretary and to such conditions as he may impose.

Signal Oil & Gas Co., 8 IBLA 150 (Nov. 20, 1972)

Since § 9(d) of the Wild and Scenic Rivers Act withdraws from mineral location only lands which constitute the bed or bank or are situated within one-quarter mile of the bank of a river listed in § 5(a) as a potential addition to the wild and scenic rivers system, the designation pursuant to § 5(d) of that Act of a river area as one which federal agencies shall evaluate in their planning reports does not place the river in the category of a potential addition to the wild and scenic rivers system or withdraw the bed or banks of the river or lands within one-quarter mile of the bank of the river from mineral location.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

ACT OF MAY 12, 1970

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental as required by section 31, Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188 (1970), where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligency, as set forth in P.L. 91-245, Act of May 12, 1970.

"Reasonable Diligence". As used in P.L. 91-245, and in 43 CFR 3108.2-1(c)(2) "reasonable diligence" in transmitting timely a rental payment for an oil and gas lease is interpreted as meaning posting the payment through the United States mail at no later date than that on which letters mailed thereon would, despite normal delays in the collection, transmittal, and delivery of mail, be delivered to the appropriate land office on or before the due date of the rental.

ACT OF MAY 12, 1970--Continued

"Justifiable Delay". As used in P.L. 91-245, "justifiable delay" in making an oil and gas lease rental payment will be recognized only where sufficiently extenuating circumstances are present so as to affect the lessee's actions.

Louis Samuel, et al., 8 IBLA 268 (Dec. 6, 1972)

An applicant asserting a claim to benefits of an Act of Congress has the burden of furnishing sufficient evidence of his entitlement thereto. Failure to submit such evidence will result in the denial of his claim. Where an applicant seeks reinstatement of his oil and gas lease under the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970), he has the burden of establishing by persuasive evidence that the failure to pay his full rental timely was either justifiable or not due to a lack of reasonable diligence. Mere assertions, unsupported by any probative evidence, are not sufficient.

James E. Fowler and Frances T. Fowler, 8 IBLA 372 (Dec. 12, 1972)

ADDITIONAL HOMESTEADS

In applying departmental regulation 43 CFR 2511.1(b)(4), which disqualifies a person from acquiring a homestead entry when he owns more than 160 acres of land in the United States, to applications for additional entries under the Act of February 20, 1917, only lands acquired by the applicant under other than the homestead laws are to be considered in testing the qualifications of the applicant.

August H. Snyder, 7 IBLA 347 (Sept. 28, 1972)

ADMINISTRATIVE PRACTICE

Where only a portion of the lands in a unitized oil and gas lease is eliminated from the unit, the leased lands are situated in whole or in part on the known geologic structure of a producing oil or gas field, and the lease terms and factual circumstances are identical to those in the decision, Standard Oil Company of California et al., 76 I.D. 271 (1969), this Department will follow the ruling by the United States Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Morton, 450 F.2d 493 (1971), which overturned that decision solely upon principles of contract construction; therefore, the eliminated lands will retain the rental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to non-unitized lands within a known geologic structure.

Standard Oil Company of California and Atlantic Richfield Company, 5 IBLA 26 (Feb. 22, 1972) 79 I.D. 23

A report of a field examination, although a proper basis for charges, notice, and a hearing, is not, by itself, without a hearing, to be used as evidence for rejecting a trade and manufacturing site purchase application in part. The Bureau of Land Management should bring a contest to reject such an application in whole or in part if the applicant has shown prima facie compliance with the law.

ADMINISTRATIVE PRACTICE--Continued

Martha J. Jillson, 6 IBLA 150 (June 8, 1972)

Where grazing privileges for certain public lands have been awarded to an asserted preference-right claimant, and it is found that he was not entitled to such a preference since control of the base lands had been vested by him in another under a contract which has expired, the case will be remanded for adjudication in the light of the existing circumstances.

Laurence A. Andren, Appellant, William J. Greenwald, Appellee, 7 IBLA 14 (July 24, 1972)

"Competitive Bidding." Competitive bidding does not require that more than one bid be submitted before the authorized officer, but only that the officer, by due advertisement, give opportunity for everyone to bid.

Tipperary Land & Exploration Corporation, 7 IBLA 270 (Sept. 19, 1972) 79 I.D. 596

The failure of a mining claimant to make the required annual rental payments in advance for claims located under the Act of June 18, 1934, 48 Stat. 984, as amended, August 28, 1937, 50 Stat. 862, 863, within the Papago Indian Reservation is a sufficient basis for invalidating the claims where the annual rental payments were not remitted until almost three months after the due date and no explanation is offered for the delay.

I.M. and Robert L. Clausen, 7 IBLA 286 (Sept. 22, 1972)

A petition for reinstatement of a homesite claim will be denied where the record clearly establishes that the homesite claim settlement was initiated at a time when the land was withdrawn from appropriation.

Leon A. Webster, 7 IBLA 333 (Sept. 26, 1972)

Where only a portion of the lands in a unitized oil and gas lease is eliminated from the unit, the leased lands are situated in whole or in part on a known geologic structure of a producing oil or gas field, and the lease terms and factual circumstances are identical to those in the decision Standard Oil Company of California, et al., 76 I.D. 271 (1969), this Department will follow the ruling by the United States Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Morton, 450 F.2d 493 (1971), which overturned that decision solely upon principles of contract construction; therefore, the eliminated lands will retain the rental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to non-unitized lands within a known geologic structure.

Standard Oil Company of California, 7 IBLA 345 (Sept. 27, 1972)

Administrative agencies have the power to make their own findings regardless of the findings of an examiner so long as their findings are based on substantial supporting evidence in the record.

Glenn Munsey, Earnest Scott, and Arnold Scott v. Smitty Baker Coal Company, Inc., 1 IBMA 208 (Oct. 20, 1972) 79 I.D. 676

ADMINISTRATIVE PRACTICE--Continued

The Department of the Interior has no authority to grant an application under the public land laws contrary to a statute of Congress; this Department is not the proper forum to decide whether or not the statute is constitutional.

Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (Nov. 22, 1972)

Where a government resurvey is challenged by an appellant, he has the burden of establishing that the resurvey is erroneous and of identifying specifically reversible error in the decision appealed from. An appellant cannot expect the Department to assume his burden of searching the record and the law in an effort to find some reversible error in the decision appealed from.

Mrs. J. W. Moore, 8 IBLA 261 (Dec. 5, 1972)

An applicant asserting a claim to benefits of an Act of Congress has the burden of furnishing sufficient evidence of his entitlement thereto. Failure to submit such evidence will result in the denial of his claim. Where an applicant seeks reinstatement of his oil and gas lease under the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970), he has the burden of establishing by persuasive evidence that the failure to pay his full rental timely was either justifiable or not due to a lack of reasonable diligence. Mere assertions, unsupported by any probative evidence, are not sufficient.

James E. Fowler and Frances T. Fowler, 8 IBLA 372 (Dec. 12, 1972)

Where the appropriate state agency approves abandonment of a well as of a date certain, marking the cessation of production, and a federal employee later notifies a person interested in the oil and gas lease that he has 60 days from a later date, erroneously construed by such employee to be the date of such cessation, within which to commence drilling or reworking operations, such notification will not be construed as creating any rights.

R. E. Hibbert, 8 IBLA 379 (Dec. 12, 1972)

Failure by an applicant to respond to a Bureau of Land Management State Office letter inquiring only whether the applicant is still interested in receiving a prospecting permit is not on adequate ground for rejection of the applicants' prospecting permit application.

Phyllis Colman and William J. Colman, 8 IBLA 444 (Dec. 27, 1972)

ADMINISTRATIVE PROCEDURE

GENERALLY

A decision of a district manager which is arbitrary or capricious will not be sustained, when challenged by one who has standing, even in the absence of any evidence of serious economic impact. To that extent, National Livestock Company and Zack Cox, I.G.D. 55 (1938), is overruled.

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

A decision involving the exercise of administrative discretion, which is supportable on any rational basis, is not arbitrary or capricious. An apportionment of the federal range, involving some abolition of "split-use" between states and based upon the effectuation of a management plan reasonably related to the protection of forage and other values, has, therefore, a rational basis and is not arbitrary or capricious.

United States v. Charles Maher, et al., 5 IBLA 209 (Mar. 21, 1972) 79 I.D. 109

The marketability test, as developed by this Department and approved by the courts, is a complement to the prudent man test of discovery of a valuable mineral deposit under the mining laws, and publication of the test in the Federal Register is not a prerequisite to its validity.

The marketability test of discovery of a valuable mineral deposit under the mining laws does not violate due process of law as being unconstitutionally vague, or as being unlawful administrative legislation.

A mining claimant has not been denied due process when his claims are contested assertedly because a permit has been granted to a museum to perform archaeological work under the Antiquities Act, and where there was some prehearing newspaper publicity that the contest was being instituted but the claimant does not show that there was any unfairness in the contest proceeding itself.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

The provisions of section 8(c) of the Administrative Procedure Act, 5 U.S.C. § 557(c) (1970), prescribing findings and conclusions on all "the material issues of fact, law, or discretion presented on the record," with "the appropriate rule, order, sanction, relief, or denial thereof," and the regulations governing contest proceedings involving mining claims, 43 CFR 4.425-8(b) (1972), do not require that an Administrative Law Judge make a ruling on a charge in a contest complaint that land is nonmineral in character, where he rules on another issue which is dispositive of the controversy.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

ADJUDICATION

A decision of a district manager which is arbitrary or capricious will not be sustained, when challenged by one who has standing, even in the absence of any evidence of serious economic impact. To that extent, National Livestock Company and Zack Cox, I.G.D. 55 (1938), is overruled.

A decision involving the exercise of administrative discretion, which is supportable on any rational basis, is not arbitrary or capricious. An apportionment of the federal range, involving some abolition of "split-use"

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

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United States v. Charles Maher, et al., 5 IBLA 209 (Mar. 21, 1972) 79 I.D. 109

A report of a field examination, although a proper basis for charges, notice, and a hearing, is not, by itself, without a hearing, to be used as evidence for rejecting a trade and manufacturing site purchase application in part. The Bureau of Land Management should bring a contest to reject such an application in whole or in part if the applicant has shown prima facie compliance with the law.

Martha J. Jillson, 6 IBLA 150 (June 8, 1972)

The Board, as the delegate of the Secretary of the Interior, is obliged to consider everything contained in the record in determining all matters relevant to the issues in the matter.

United States v. Leonard F. Nelson, 8 IBLA 294, (Dec. 6, 1972)

BURDEN OF PROOF

In a government mining contest, where the contestant had made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimant, and he cannot secure a determination that the claim is valid merely by attempting to discredit the government's witness.

Government mineral examiners in determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case.

United States v. L. B. McGuire, 4 IBLA 307 (Feb. 4, 1972)

In a Government contest against a mining claim where the Government has shown that the small market for dolomite useful for metallurgical purposes is being met by more competitive sources than the claim, the contestee then has the burden of proof to show by a preponderance of the evidence that the dolomite could be marketed at a profit for such purposes.

United States v. Richard M. Lease, 6 IBLA 11 (May 10, 1972) 79 I.D. 379

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery and is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case.

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

In a government mining contest, where the contestant made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimants.

United States of America v. Raymond Bass, Betty Yeck, et al., 6 IBLA 113 (June 5, 1972)

The claimant does not meet his burden to establish the existence of a valuable mineral deposit by showing the claim to have been valuable in the past.

The Government has the initial burden of establishing a prima facie case that the claim is invalid. The contestee must then prove by a preponderance of the evidence that the claim is valid.

United States v. Calla Mortenson, et al., 7 IBLA 123 (Aug. 21, 1972)

A mining contestee is the true proponent under the Administrative Procedure Act that his claim is valid and, therefore, has the burden of overcoming the Government's prima facie case of no discovery with a preponderance of the evidence.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

In a government mining contest, where the contestant made a prima facie showing of a lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimants.

United States v. Benjamin L. Taylor and Martha L. Taylor, 8 IBLA 264 (Dec. 4, 1972)

Where a government resurvey is challenged by an appellant, he has the burden of establishing that the resurvey is erroneous and of identifying specifically reversible error in the decision appealed from. An appellant cannot expect the Department to assume his burden of searching the record and the law in an effort to find some reversible error in the decision appealed from.

Mrs. J. W. Moore, 8 IBLA 261 (Dec. 5, 1972)

DECISIONS

The Administrative Procedure Act, 5 U.S.C. § 557(c)(A) does not require that an initial decision must incorporate a ruling on each finding and conclusion made in the recommended decision of the hearing examiner but rather it is sufficient if the initial decision contains a statement of its findings, conclusions, and the reasons or basis therefor.

United States v. Neil Stewart, 5 IBLA 39 (Feb. 28, 1972) 79 I.D. 27

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

Section 8(b) of the Administrative Procedure Act requires findings of fact. In the absence of findings it may be impossible for the Board of Mine Operations Appeals to review a decision of an examiner, and the case should be remanded to the examiner.

Lucas Coal Company, 1 IBMA 138 (June 29, 1972) 79 I.D. 425

A statement made in a Bureau appeal decision which does not accurately reflect one evidentiary fact does not establish that the decision's other findings were erroneous, and this Board will sustain the Bureau's determination that mining claims are invalid where the entire record supports that conclusion.

Under the Administrative Procedure Act the record made at a hearing constitutes the exclusive record for decision except to the extent official notice of facts may be taken. Further evidence presented on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision, but may only be considered to determine if there should be a further hearing.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

The provisions of section 8(c) of the Administrative Procedure Act, 5 U.S.C. § 557(c) (1970), prescribing findings and conclusions on all "the material issues of fact, law, or discretion presented on the record," with "the appropriate rule, order, sanction, relief, or denial thereof," and the regulations governing contest proceedings involving mining claims, 43 CFR 4.425-8(b) (1972), do not require that an Administrative Law Judge make a ruling on a charge in a contest complaint that land is nonmineral in character, where he rules on another issue which is dispositive of the controversy.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

HEARING EXAMINERS

The provisions of section 8(c) of the Administrative Procedure Act, 5 U.S.C. § 557(c) (1970), prescribing findings and conclusions on all "the material issues of fact, law, or discretion presented on the record," with "the appropriate rule, order, sanction, relief, or denial thereof," and the regulations governing contest proceedings involving mining claims, 43 CFR 4.425-8(b) (1972), do not require that an Administrative Law Judge make a ruling on a charge in a contest complaint that land is nonmineral in character, where he rules on another issue which is dispositive of the controversy.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

HEARINGS

In an administrative proceeding to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for impartial hearing are provided in accordance with the Administrative porcedure Act. 5 U.S.C. §§ 551 et seq. (1970).

United States of America v. Raymond Bass, Betty Yeck et al., 6 IBLA 113 (June 5, 1972)

A request for a hearing in connection with an appeal will not be granted where undisputed facts are of record, and the determination rests on legal conclusions based on such facts.

Starling Brokers, et al., 6 IBLA 237 (June 26, 1972)

A desert land entry may not be canceled for defects not appearing on the face of the record without giving the entryman notice and an opportunity to be heard.

Raymond E. Sitta, 7 IBLA 55 (Aug. 8, 1972)

A request for a hearing and motions for certain pretrial procedures will be denied where the record contains all information necessary for proper legal determinations.

William B. Murray and Chris Palzer, 7 IBLA 158 (Aug. 30, 1972)

New evidence submitted subsequent to a hearing held pursuant to a Surface Resources Act proceeding cannot be considered in deciding the case on the merits but can only be considered to determine whether a further hearing is warranted. 30 U.S.C. § 613.

United States v. Fannie E. Lewis Trussel, 7 IBLA 225 (Sept. 11, 1972)

Under the Administrative Procedure Act the record made at a hearing constitutes the exclusive record for decision except to the extent official notice of facts may be taken. Further evidence presented on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision, but may only be considered to determine if there should be a further heating.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

In a Departmental proceeding to determine the validity of a mining claim, an evidentiary hearing under the Administrative Procedure Act is required only if there is a disputed determinative question of fact; where the validity of a claim turns on the legal effect to be given to facts of record determining the status of the land when the claim was located no hearing is required.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

Section 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), does not apply to determinations relating to the issuance of an oil and gas lease because no hearing is required by the Mineral Leasing Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. §§ 181 et seq. (1970), or by the due process requirements of the Constitution.

Chris Palzer, et al., 8 IBLA 299 (Dec. 6, 1972)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

Rudolph Chase and Raymond W. Voss, 8 IBLA 351 (Dec. 11, 1972)

JUDICIAL REVIEW

The filing of a court action to review a decision of this Department does not automatically suspend the effect of the decision. This Board, however, may order a suspension of the decision during the pendency of the court action if justice will thereby be served. If the action challenges the assessment of damages for a grazing trespass, unless the court orders otherwise, the grazing applicant's failure to pay the assessed damages will generally continue to serve as a bar to the issuance of any privileges to him until or unless the court finds the damages should not be assessed.

Eldon L. Smith, 5 IBLA 330 (Apr. 18, 1972) 79 I.D. 149

PUBLIC INFORMATION

Excepted from the ordinarily free public availability of government records are machine-retrievable records derived substantially out of a data base formed from copyrighted publications obtained with limited rights by the Government for its own use.

Limited Accessibility for Public to Privately Copyrighted Data Machine Processed by Government, M-36848 (Jan. 12, 1972) 79 I.D. 1

The withholding, under 5 U.S.C. § 552(b)(3), (4) and (9), of the classification of selected oil reservoirs as to their potential for secondary recovery by waterflooding techniques is warranted, where the classification is essentially a "valuation" of mineral property, the disclosure of which is prohibited by an Act of Congress, consists of geological and geophysical information concerning wells, and where such disclosure would, in effect, reveal trade secrets and commercial or financial information.

Appeal of J. M. Huber Corporation Availability of Information, M-36849 (Aug. 18, 1972) 79 I.D. 631

ALASKA

GENERALLY

In an appeal from the rejection of an application to purchase a headquarters site an appellant's request for a hearing may be granted where disputed facts are alleged which, if proved, would warrant the granting of the relief sought.

Lucille M. Frederick, 6 IBLA 47 (May 16, 1972)

The Secretary of the Interior is authorized under sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) (1970) [formerly 48 U.S.C. § 421 (1958)], to promulgate regulations governing small sales of timber in Alaska which provide for competitive bidding. However, where

ALASKA--Continued

GENERALLY--Continued

regulations specifically provide for exclusively noncompetitive procedures for such sales, the general timber regulations, based upon 30 U.S.C. § 601 (1970) will be deemed not applicable.

Andrew W. Miscovich, 6 IBLA 100 (May 31, 1972) 79 I.D. 410

An applicant whose business is headquartered in one location but who carries on essential aspects of it in a separate claimed area should not have his application to purchase rejected solely for that reason. It is not necessary that all functions or facets of the enterprise be carried on at the site claimed or that it is directly profitable. Such valuable purposes as demonstration and testing of products, though not directly profitable in themselves, may be carried out in such a manner as to further the enterprise within the meaning of the statute.

A casual connection between the use of a site not contiguous to the primary business property will not support a trade and manufacturing site claim. To the contrary, the burden is upon the claimant to show a direct and necessary purpose in furthering his enterprise.

David A. Burns, 6 IBLA 171 (June 15, 1972)

The Act of April 29, 1950, requiring the filing of a notice of location or a purchase application before an occupant of a trade and manufacturing site can be given credit for his occupancy, does not work an unlawful forfeiture of an occupancy right.

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of April 29, 1950, because the claimant did not file a notice of location or purchase application prior to the withdrawal.

Any right under a notice of location required by the Act of April 29, 1950, is personal to the claimant filing the notice. A transferee of the claimant's possessory interest in a trade and manufacturing site cannot claim under his transferor's notice to avoid the effect of a withdrawal where the transferee had not filed his own notice or purchase application prior to the withdrawal.

Kennecott Copper Corporation, 8 IBLA 21 (Oct. 6, 1972) 79 I.D. 636

Surveyed lots within the St. Paul townsite (Pribilof Islands, Alaska) which were withdrawn from all forms of appropriation under the public land laws by section 11 of the Alaska Native Claims Settlement Act are not subject to disposal under the Recreation and Public Purposes Act, and an application thereunder must be rejected.

Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (Nov. 22, 1972)

ALASKA--Continued

HEADQUARTERS SITES

In an appeal from the rejection of an application to purchase a headquarters site an appellant's request for a hearing may be granted where disputed facts are alleged which, if proved, would warrant the granting of the relief sought.

Lucille M. Frederick, 6 IBLA 47 (May 16, 1972)

Equitable adjudication may be invoked to permit consideration of an application to purchase a headquarters site which was not filed within the time required where substantial compliance with the law is asserted and the delay is satisfactorily explained.

Carla D. Botner, 7 IBLA 335 (Sept. 26, 1972)

Equitable adjudication may be invoked to permit consideration and reinstatement of a headquarters site purchase application where a survey deposit was not paid within the time required, but substantial compliance of the law otherwise has been alleged, and the claim was initiated before the land was withdrawn by Public Land Order No. 4582.

Beverly J. Hayes, 8 IBLA 287 (Dec. 6, 1972)

A headquarters site application is properly rejected where the appellant fails to produce any probative evidence that the land claimed as a headquarters site was used in connection with a productive industry within the meaning of the headquarters site law. 43 U.S.C. § 687a (1970).

A hearing will not be granted in connection with a headquarters site application where the applicant fails to allege probative facts which if proved would entitle her to favorable consideration of her application.

Kathleen M. Smyth, 8 IBLA 425 (Dec. 20, 1972)

HOMESITES

Equitable adjudication may be invoked to permit consideration of a homesite purchase application which was not filed within the time required, where substantial compliance with the law has been alleged, and the claim was initiated before the land was withdrawn by Public Land Order No. 4582.

Herbert W. Simms, 7 IBLA 51 (Aug. 4, 1972)

Equitable adjudication may be invoked to permit consideration of a homesite purchase application which was not filed within the time required where substantial compliance with the law is asserted and the delay is satisfactorily explained.

Richard Lee Farrens, 7 IBLA 133 (Aug. 25, 1972)

A petition for reinstatement of a homesite claim will be denied where the record clearly establishes that the homesite claim settlement was initiated at a time when the land was withdrawn from appropriation.

Leon A. Webster, 7 IBLA 333 (Sept. 26, 1972)

ALASKA--Continued

HOMESITES--Continued

By section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), occupancy of a homesite claim prior to the filing of a notice of settlement or of an application to purchase will not be considered as meeting the occupancy requirements of that law.

Where the record shows that there has not been compliance with law within the life of a homesite claim i.e., within 5 years from the filing of the notice of location with the Land Office the claim is properly canceled.

Charlotte Lorraine (Pontz) Furgione, 8 IBLA 432 (Dec. 21, 1972)

HOMESTEADS

Where a homestead entry is made on permafrost lands, for which entry the entryman is entitled to two years credit for his military service, to be allocated to his second and third entry years, and the entryman during his fourth entry year plants no crops, but takes measures to drain the excessive moisture with a view to raising crops in the fifth entry year, and in fact does raise a crop during that year, the cultivation requirements of the homestead laws will be deemed to have been satisfied.

United States v. William Leonard Grediagin, 7 IBLA 1 (July 24, 1972)

This Department does not have authority to extend the statutory life of a homestead entry to permit the entryman to construct a habitable house on it after the expiration of the five year period, and the entry will be canceled if appellant fails to have a habitable house on the entry at the time for submission of final proof, absent a showing that equitable adjudication will lie.

A homestead entry is properly canceled for failure of the entryman to meet the cultivation requirements where he admits that he merely cleared the land by the end of the fourth year.

A homestead entry is properly canceled for failure of the entryman to meet the residence requirements of the homestead law in that the entryman was absent from the homestead for a period of time exceeding five months each entry year and notice of the absence was not submitted to the land office as prescribed by statute.

Gene L. Brown, 7 IBLA 71 (Aug. 15, 1972)

The cancellation of a homestead entry and the rejection of the final proof are proper when the final proof on its face shows a failure by the entrywoman to satisfy the residence and cultivation requirements of the homestead law.

Lois A. Mayer, 7 IBLA 127 (Aug. 24, 1972)

When final proof shows that an entryman met the cultivation requirement for the fifth entry year and that such entryman is entitled to two years' credit for military service which

ALASKA--Continued

HOMESTEADS--Continued

he may allocate to the partial satisfaction of his residence and cultivation requirements, leaving a one-year deficiency in cultivation, and where facts are alleged which, if proved, might excuse the entryman's failure to cultivate during that year, the case will be remanded to the land office for a determination of whether the entryman's misfortunes were the cause of his failure to meet the balance of the cultivation requirement.

Bobby L. Cox, 7 IBLA 277 (Sept. 20, 1972)

A homestead final proof submitted at the end of the fifth entry year must be rejected and the entry canceled where it shows on its face that the entryman has not cultivated in any of the entry years.

A request for reduction of the homestead cultivation requirements is properly denied where the record shows that the entryman has failed to cultivate any of the cultivable land within the entry.

Ronald E. Hurst, 8 IBLA 1 (Oct. 3, 1972)

Where no appeal is taken from a decision canceling a homestead entry for failure to submit final proof at the expiration of the term of the entry, and final proof is submitted six years subsequent to such decision, res judicata and the doctrine of finality of administrative action bar further consideration of the case when an appeal is taken from a decision rejecting final proof.

John W. Roth, 8 IBLA 39 (Oct. 11, 1972)

Where the final proof submitted by a homestead entryman shows that the cultivation requirements of the homestead laws have not been met, the final proof is defective on its face and is subject to rejection unless a reduction in the cultivation requirements is warranted.

An application for a reduction in the area required to be cultivated on a homestead entry is properly rejected where the conditions prescribed by regulation for such a reduction do not exist.

DeWitt W. Fields, 8 IBLA 160 (Nov. 22, 1972)

The portion of a homestead settlement located on lands under power project withdrawals is null and void and such lands remain reserved from entry, location or other disposal under the public land laws until the withdrawal is vacated.

Francis I. Hunt, 8 IBLA 390 (Dec. 19, 1972)

ALASKA--Continued

LAND GRANTS AND SELECTIONS

Applications

A homestead application must be rejected when filed at a time when the Master Title Plat in the local Bureau of Land Management office shows prima facie that the lands are embraced in a state selection application and the serial register sheet, referred to on the plat, shows that tentative approval has been given to the state selection for those lands.

State of Alaska, Kenneth D. Makepeace, 6 IBLA 58 (May 22, 1972) 79 I.D. 391

NATIVE ALLOTMENTS

Where applicants for Alaska Native allotments delivered their evidence of occupancy to the agency office of the Bureau of Indian Affairs which held them past the time when they were required to be filed with the Bureau of Land Management, absent any evidence that the delays were occasioned through the fault of the respective applicants, the rejection of those documents will be set aside, the documents received and the entries reinstated in accordance with the principles of equitable adjudication.

Where Native allotment applications under the Act of May 17, 1906 (34 Stat. 197) were filed and pending before the Department upon enactment of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688), further processing of the applications will be deferred pending a declaration by each applicant of his election to waive his rights under section 14 (h)(5) of the 1971 act or to withdraw his pending application under the 1906 act.

Julius F. Pleasant, John Moore, Elia Wassillie, 5 IBLA 171 (Mar. 14, 1972)

Where native allotment applications were pending and on appeal on December 18, 1971, the cases will be remanded to permit the applicants the opportunity of availing themselves of the option selection afforded by section 18(a) of the Alaska Native Claims Settlement Act, P. L. 92-203.

Isaac Mute, et al., 6 IBLA 75 (May 22, 1972)

OIL AND GAS LEASES

An oil and gas lease offer for a section of land in Alaska, which comprises only a portion of a "leasing block" designated for leasing pursuant to the provisions of Public Land Order 3521, is unacceptable and must be rejected.

Bertil A. Granberg, 7 IBLA 162 (Aug. 31, 1972)

ALASKA--Continued

OIL AND GAS LEASES--Continued

The Department of the Navy has exclusive jurisdiction over the petroleum resources within Naval Petroleum Reserve No. 4, and the Secretary is not authorized to issue oil and gas leases on lands embraced within the Reserve.

Chris Palzer, et al., 8 IBLA 299 (Dec. 6, 1972)

POSSESSORY RIGHTS

The Act of April 29, 1950, requiring the filing of a notice of location or a purchase application before an occupant of a trade and manufacturing site can be given credit for his occupancy, does not work an unlawful forfeiture of an occupancy right.

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of April 29, 1950, because the claimant did not file a notice of location or purchase application prior to the withdrawal.

Any right under a notice of location required by the Act of April 29, 1950, is personal to the claimant filing the notice. A transferee of the claimant's possessory interest in a trade and manufacturing site cannot claim under his transferor's notice to avoid the effect of a withdrawal where the transferee had not filed his own notice or purchase application prior to the withdrawal.

Kennecott Copper Corporation, 8 IBLA 21 (Oct. 6, 1972) 79 I.D. 636

SALES

The Secretary of the Interior is authorized under sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) (1970) [formerly 48 U.S.C. § 421 (1958)], to promulgate regulations governing small sales of timber in Alaska which provide for competitive bidding. However, where regulations specifically provide for exclusively noncompetitive procedures for such sales, the general timber regulations, based upon 30 U.S.C. § 601 (1970) will be deemed not applicable.

Andrew W. Miscovich, 6 IBLA 100 (May 31, 1972) 79 I.D. 410

SHORE SPACE RESERVES

An application to purchase a trade and manufacturing site may not be rejected on the basis that it extends more than 80 rods (1320 feet) along the shore of any navigable water where the site consists of two lots, one behind the other, each one of which extends 1073.82 feet (16.27 chains) along separate and discrete bodies of water, leaving at least 80 rods of shoreline between the termini of the entry.

David W. Henley, 7 IBLA 233 (Sept. 13, 1972)

ALASKA--Continued

TRADE AND MANUFACTURING SITES

Public Land Order 4582, as modified, did not bar the granting of an application to purchase a trade or manufacturing site where the record shows the claim was initiated prior to December 14, 1968. 43 U.S.C. § 687a (1970).

The grace period for filing set forth in 43 CFR § 1840.0-6(b) (1970) applies only to documents filed in connection with an appeal, and does not apply to applications to purchase a trade and manufacturing site under 43 U.S.C. § 687a et seq. (1970).

The authorization in 43 CFR § 1821.2-2(g) (1970) to consider a document as timely filed under certain circumstances does not permit waiver of deadlines imposed by statute. 43 U.S.C. § 687a-1 (1970).

Under the general principles of equitable adjudication an applicant for purchase of a trade and manufacturing site claim who filed his application 2 days after the expiration of the 5 year statutory period allowed for such filing may have his claim adjudicated on its merits. 43 U.S.C. § 687a-1 (1970).

C. Rick Houston, 5 IBLA 71 (Mar. 1, 1972)

The time for improving a trade and manufacturing site and developing productive industry thereon cannot be extended beyond the 5 years provided in 43 U.S.C. § 687a (1970).

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

A trade or manufacturing site claim is not to be canceled for defects not appearing on the face of the record without giving the claimant an opportunity to be heard. 43 U.S.C. § 687a (1970).

On appeal from the rejection of a trade and manufacturing site application, the case will be remanded for hearing when it appears that a hearing is necessary to determine whether the applicant has occupied the site for the purposes of trade, manufacture or other productive industry and has established on the land improvements needed in the prosecution of such activities. 43 U.S.C. § 687a (1972).

Don E. Jonz, 5 IBLA 204 (Mar. 20, 1972)

By section 5 of the Act of April 29, 1950, occupancy of a trade and manufacturing site claim prior to a notice of settlement will not be considered as meeting the occupancy requirements of the trade and manufacturing site law; the Act of April 29, 1950, however, does not bar consideration of improvements made prior to the notice of settlement in determining whether there are the required improvements needed to purchase a trade and manufacturing site.

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

The Bureau of Land Management's rejection of an application to purchase a trade and manufacturing site will be set aside on appeal where the applicant requests a hearing, asserts that he conducted a commercial enterprise on the claim, and has alleged sufficient facts in support of the application to warrant a hearing before there can be a determination that the requirements of the law have not been met.

Lance H. Minnis, 6 IBLA 94 (May 23, 1972)

A report of a field examination, although a proper basis for charges, notice, and a hearing, is not, by itself, without a hearing, to be used as evidence for rejecting a trade and manufacturing site purchase application in part. The Bureau of Land Management should bring a contest to reject such an application in whole or in part if the applicant has shown prima facie compliance with the law.

There is no necessity for ordering a hearing on the appeal from a partial rejection of a trade and manufacturing site purchase application, where the appellant fails to allege facts which, if proved, would entitle her to favorable consideration of the rejected acreage.

Martha J. Jillson, 6 IBLA 150 (June 8, 1972)

An applicant whose business is headquartered in one location but who carries on essential aspects of it in a separate claimed area should not have his application to purchase rejected solely for that reason. It is not necessary that all functions or facets of the enterprise be carried on at the site claimed or that it is directly profitable. Such valuable purposes as demonstration and testing of products, though not directly profitable in themselves, may be carried out in such a manner as to further the enterprise within the meaning of the statute.

A casual connection between the use of a site not contiguous to the primary business property will not support a trade and manufacturing site claim. To the contrary, the burden is upon the claimant to show a direct and necessary purpose in furthering his enterprise.

Where a decision by the land office is based on an erroneous interpretation of the law, the matter will be remanded for reexamination by the land office. If the matter then cannot be resolved, a contest should be entered and a hearing ordered.

David A. Burns, 6 IBLA 171 (June 15, 1972)

No relief may be granted to extend the time to meet the requirements of improvement and development of a trade and manufacturing site within the time required for the filing of a purchase application.

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

Equitable adjudication may be invoked to permit consideration of a trade and manufacturing site purchase application which was not filed within the time required where substantial compliance with the law has been alleged and the reason given for the delay in filing the application is compelling.

Elizabeth Hickethier, 6 IBLA 306 (July 11, 1972)

Trade and manufacturing site purchase application is properly rejected where the appellant shows only preliminary preparation and no actual business use of the site.

Thelma S. Butcher, 7 IBLA 48 (Aug. 3, 1972)

An application to purchase land embraced in a trade and manufacturing site must be based upon occupancy and use of land as the site of some commercial enterprise, and cannot be based upon the use of the land in connection with a business the objective of which is the sale or other disposition of the land itself.

Seldon H. Klinke, 7 IBLA 83 (Aug. 18, 1972)

Equitable adjudication may be invoked to permit consideration of an application to purchase a trade and manufacturing site which was not filed within the time required, where substantial compliance with the law is asserted and the delay is satisfactorily explained.

Alvin R. Aspelund, 7 IBLA 165 (Aug. 31, 1972)

An application to purchase a trade and manufacturing site may not be rejected on the basis that it extends more than 80 rods (1320 feet) along the shore of any navigable water where the site consists of two lots, one behind the other, each one of which extends 1073.82 feet (16.27 chains) along separate and discrete bodies of water, leaving at least 80 rods of shoreline between the termini of the entry.

David W. Henley, 7 IBLA 233 (Sept. 13, 1972)

The Act of April 29, 1950, requiring the filing of a notice of location or a purchase application before an occupant of a trade and manufacturing site can be given credit for his occupancy, does not work an unlawful forfeiture of an occupancy right.

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of April 29, 1950, because the claimant did not file a notice of location or purchase application prior to the withdrawal.

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

Any right under a notice of location required by the Act of April 29, 1950, is personal to the claimant filing the notice. A transferee of the claimant's possessory interest in a trade and manufacturing site cannot claim under his transferor's notice to avoid the effect of a withdrawal where the transferee had not filed his own notice or purchase application prior to the withdrawal.

Kennecott Copper Corporation, 8 IBLA 21 (Oct. 6, 1972) 79 I.D. 636

Where a factual dispute exists on appeal from rejection of a trade and manufacturing site application, the case will be remanded for a hearing to resolve disputed issues and determine if the applicant has occupied the site for the purposes of trade, manufacture, or other productive industry and has established on the land improvements needed in the prosecution of such activities.

Frontier Rock & Sand, Inc., 8 IBLA 112 (Nov. 14, 1972)

Where there is no dispute as to the facts, the rejection of an application to purchase a trade and manufacturing site will be affirmed insofar as it describes land which has not been used for the purpose of trade, manufacture or other productive industry.

Golden Valley Electric Association, 8 IBLA 386 (Dec. 19, 1972)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

Public Land Order 4582, as modified, was revoked and the withdrawal imposed thereby terminated by the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688).

Communication Equipment and Services, Inc., 6 IBLA 44 (May 12, 1972)

Surveyed lots within the St. Paul townsite (Pribilof Islands, Alaska) which were withdrawn from all forms of appropriation under the public land laws by section 11 of the Alaska Native Claims Settlement Act are not subject to disposal under the Recreation and Public Purposes Act, and an application thereunder must be rejected.

Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (Nov. 22, 1972)

The right of a homesteader to equitable adjudication is determined as of the date on which he has substantially complied with the homestead law, and this right is not affected by a subsequent withdrawal under the Alaska Native Claims Settlement Act, 43 U.S.C.A. § 1610 (1972).

Francis I. Hunt, 8 IBLA 390 (Dec. 19, 1972)

APPEALS

(See also Contracts, Federal Coal Mine Health and Safety Act of 1969, Grazing Permits and Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts)

An order of a hearing examiner dismissing an appeal to him, involving the partial rejection of a grazing nonuse application, which order was based upon the willful nonappearance of the appellant or his representative at the hearing scheduled, will be sustained.

Ben H. Lyon Estate v. State Director of Idaho, 5 IBLA 327 (Apr. 17, 1972)

Where an appeal has been dismissed because it is deemed moot, and new facts adduced show that the appeal is justiciable, the appeal is properly considered on its merits.

Ashland Oil, Inc., et al., 7 IBLA 58 (Aug. 9, 1972) 79 I.D. 532

An operator, holding under an approved assignment of operating rights, may appeal from a decision that an oil and gas lease expired by operation of law even though the operator was not listed as a party in the decision appealed from.

Kirkpatrick Oil & Gas Company, Beard Oil Company, John M. Beard, Bruce Anderson, 8 IBLA 108 (Nov. 13. 1972)

APPLICATIONS AND ENTRIES

GENERALLY

Land included in an outstanding coal prospecting permit is not available for permit to another, and an application for such land must be rejected.

Hiko Bell Mining & Oil Company, 6 IBLA 8 (May 9, 1972)

A homestead application must be rejected when filed at a time when the Master Title Plat in the local Bureau of Land Management office shows prima facie that the lands are embraced in a state selection application and the serial register sheet, referred to on the plat, shows that tentative approval has been given to the state selection for those lands.

State of Alaska, Kenneth D. Makepeace, 6 IBLA 58 (May 22, 1972) 79 I.D. 391

Equitable adjudication may be invoked to permit consideration of a homesite purchase application which was not filed within the time required, where substantial compliance with the law has been alleged, and the claim was initiated before the land was withdrawn by Public Land Order No. 4582.

Herbert W. Simms, 7 IBLA 51 (Aug. 4, 1972)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

The Department of the Interior has no authority to grant an application under the public land laws contrary to a statute of Congress; this Department is not the proper forum to decide whether or not the statute is constitutional.

Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (Nov. 22, 1972)

An applicant asserting a claim to benefits of an Act of Congress has the burden of furnishing sufficient evidence of his entitlement thereto. Failure to submit such evidence will result in the denial of his claim. Where an applicant seeks reinstatement of his oil and gas lease under the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970), he has the burden of establishing by persuasive evidence that the failure to pay his full rental timely was either justifiable or not due to a lack of reasonable diligence. Mere assertions, unsupported by any probative evidence, are not sufficient.

James E. Fowler and Frances T. Fowler, 8 IBLA 372 (Dec. 12, 1972)

Where the record shows that there has not been compliance with law within the life of a homesite claim i.e., within 5 years from the filing of the notice of location with the Land Office the claim is properly canceled.

Charlotte Lorraine (Pontz) Furgione, 8 IBLA 432 (Dec. 21, 1972)

Failure by an applicant to respond to a Bureau of Land Management State Office letter inquiring only whether the applicant is still interested in receiving a prospecting permit is not on adequate ground for rejection of the applicants' prospecting permit application.

Phyllis Colman and William J. Colman, 8 IBLA 444 (Dec. 27, 1972)

CANCELLATION

Where the record shows that there has not been compliance with law within the life of a homesite claim i.e., within 5 years from the filing of the notice of location with the Land Office the claim is properly canceled.

Charlotte Lorraine (Pontz) Furgione, 8 IBLA 432 (Dec. 21, 1972)

APPLICATIONS AND ENTRIES--Continued

FILING

The grace period for filing set forth in 43 CFR § 1840.0-6(b) (1970) applies only to documents filed in connection with an appeal, and does not apply to applications to purchase a trade and manufacturing site under 43 U.S.C. § 687a et seq. (1970).

The authorization in 43 CFR § 1821.2-2(g) (1970) to consider a document as timely filed under certain circumstances does not permit waiver of deadlines imposed by statute. 43 U.S.C. § 687a-1 (1970).

C. Rick Houston, 5 IBLA 71 (Mar. 1, 1972)

Where applicants for Alaska Native allotments delivered their evidence of occupancy to the agency office of the Bureau of Indian Affairs which held them past the time when they were required to be filed with the Bureau of Land Management, absent any evidence that the delays were occasioned through the fault of the respective applicants, the rejection of those documents will be set aside, the documents received and the entries reinstated in accordance with the principles of equitable adjudication.

Julius F. Pleasant, John Moore, Elia Wassillie, 5 IBLA 171 (Mar. 14, 1972)

A homestead application must be rejected when filed at a time when the Master Title Plat in the local Bureau of Land Management office shows prima facie that the lands are embraced in a state selection application and the serial register sheet, referred to on the plat, shows that tentative approval has been given to the state selection for those lands.

State of Alaska, Kenneth D. Makepeace, 6 IBLA 58 (May 22, 1972) 79 I.D. 391

APPRAISALS

A Bureau of Land Management appraisal of the amount of compensation to be paid to the owner of an authorized fence, who was a former grazing lessee on lands approved for sale to a state agency, will be modified to increase the amount where the appraisal is made on a per-rod basis and the fence owner contends on appeal, which contention is uncontroverted by the state, that he measured the fence at a greater length than the length on which the appraisal was based, because much of the fence is constructed over rough terrain which measures out to a greater distance than the surveyed distance.

Carl A. Klug, Nebraska Game and Parks Commission, 8 IBLA 35 (Oct. 11, 1972)

APPROPRIATIONS

A claim asserted under the Suspension of Work clause for costs arising out of a delay in performance of a construction contract caused by the exhaustion of available funds following the Government's failure to appropriate additional moneys necessary to enable

APPROPRIATIONS--Continued

a contractor to complete the work prior to the time established by the contract and the President's subsequent impounding of such funds, which resulted in the contractor's election to stop work, was dismissed as being outside the Board's jurisdiction since the contract provided that the Government's liability for work costing in excess of a specified amount reserved and available for payment was contingent upon further appropriations and reservation, and the President's action was a sovereign act taken to halt inflation, neither of which is considered to be a stoppage by actual or constructive direction of the contracting officer in the administration of the contract within the meaning of the Suspension of Work clause.

Appeal of Granite Construction Company, IBCA-947-1-72 (Nov. 13, 1972) 79 I.D. 644

ATTORNEYS

A field official of the Bureau of Indian Affairs, not otherwise shown to be qualified, is not eligible to practice before the Department by representing individual Indians, Aleuts and Eskimos in appeals to the Board of Land Appeals, notwithstanding that the appellants reside in the area administered by the Bureau of Indian Affairs office wherein he is employed.

One who, as a government employee, has participated in a matter pending before the Department through his decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, is not authorized to practice before the Department on behalf of a private appellant in a case involving that matter.

Julius F. Pleasant, John Moore, Elia Wassillie, 5 IBLA 171 (Mar. 14, 1972)

BOUNDARIES
(See also Accretion, Surveys of Public Lands)

In the interpretation of a patent for a Mexican private land grant in which the bank of a river is designated as one of the boundaries, the rule will be applied that where a call is from one point in a continuous object, natural or artificial, to another point in the same object, the line between and connecting the two points follows the sinuosities of such object, rather than a straight line connecting these points. The call for courses and distances in a Government survey made subsequent to a Mexican private land grant which is at variance with sinuosities of a river bank must yield in case of doubt to the superior call to the natural monuments referred to as constituting the boundary of the claim.

Clarence H. Hunt, Mamie M. Hunt, 5 IBLA 389 (May 4, 1972)

In determining what land is conveyed under patents or grants of public land bordering on a meandered body of water, the general rule is that the waterline itself, not the meander line, constitutes the boundary

BOUNDARIES--Continued

except where there is fraud or gross error shown in the survey of the lines or where the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.

Utah Power and Light Company, 6 IBLA 79 (May 22, 1972) 79 I.D. 397

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

Mining claims located after the land has been segregated from appropriation under the mining laws by notice of proposed classification under the Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-18 (1970), published in the Federal Register are properly declared null and void ab initio.

Rudolph Chase and Raymond W. Voss, 8 IBLA 351 (Dec. 11, 1972)

COAL LEASES AND PERMITS

GENERALLY

Neither statute nor regulation prohibits the granting of coal prospecting permits or leases which are limited to a specific depth, stratum, contour or horizon, and therefore, in view of the broad discretionary nature of the authority vested in the Secretary by the Mineral Leasing Act, the question of allowing such horizontally limited permits or leases is exclusively a policy determination.

Clear Creek Inn Corporation, 7 IBLA 200 (Sept. 11, 1972) 79 I.D. 571

An application for a coal prospecting permit is properly rejected upon a determination that the lands applied for are withdrawn by Executive Order 5327 of April 15, 1930.

John R. Shelburne, 8 IBLA 115 (Nov. 14, 1972)

An application for a coal prospecting permit is properly rejected upon a determination that the lands applied for are withdrawn by Executive Order 5327 of April 15, 1930.

Heath B. Fowler, 8 IBLA 376 (Dec. 12, 1972)

APPLICATIONS

Land included in an outstanding coal prospecting permit is not available for permit to another, and an application for such land must be rejected.

Hiko Bell Mining & Oil Company, 6 IBLA 8 (May 9, 1972)

LEASES

Where the lessee applies pursuant to section 3 of the Mineral Leasing Act to modify his lease to include more than 2,560 acres, rejection of the application is required

COAL LEASES AND PERMITS--Continued

LEASES--Continued

because section 3 imposes a 2,560 acre limitation on the size of a modified lease; the acreage limitation is not repealed by removal of a similar limitation in section 2 of the Act by the amendatory Act of August 31, 1964.

Peabody Coal Company, 4 IBLA 303 (Feb. 4, 1972)

Under 30 U.S.C. § 203 (1970) an application for a modification of a coal lease which includes noncontiguous lands cannot be approved for such lands.

The Kemmerer Coal Company, 5 IBLA 319 (Apr. 14, 1972)

An application to modify a coal lease to include contiguous coal deposits will be denied if it is determined that the additional lands requested can be developed as part of an independent operation or there is a competitive interest in them.

Despite a disclaimer by one coal producing company that it does not intend to bid on a coal lease, there is a competitive interest in the land and deposits if that company enters into an agreement with another coal producing company to sublease several of the coal seams in the land which the latter company seeks to have added to an existing coal lease by modification of its lease.

Western Slope Carbon, Inc., 5 IBLA 311 (Apr. 14, 1972)

PERMITS

A coal prospecting permit may be allowed where the Geological Survey reports that the lands are underlain by beds of coal which are too deep for economical mining in light of tremendous reserves of coal of comparable quality which are recoverable by less costly surface mining methods in the same vicinity.

Rejection of applications for coal prospecting permits is properly reversed when the applicant presents persuasive and convincing evidence which clearly shows to be erroneous a determination of the Geological Survey that the lands sought are underlain by several thick beds of economically workable coal deposits and are therefore subject to leasing only.

In determining whether lands are of such character as to subject them to leasing rather than prospecting under permits, the Secretary of the Interior is entitled to rely upon the reasoned opinion of his technical expert, the Geological Survey. Absent a clear showing that the Survey's determination was improperly made, the Secretary will not act to disturb the determination. However, a prospecting permit may be granted where there is no substantial evidence to support Geological Survey's opinion that the workability of

PERMITS--Continued

coal underlying the land applied for is known. The "workability" of the coal is an economic concept.

Clear Creek Inn Corporation, 7 IBLA 200 (Sept. 11, 1972) 79 I.D. 571

Workability

In determining "workability" in a coal prospecting situation the standard to be applied is set forth in the U.S. Geological Survey Manual, section 671.5.2(b), which points to earlier decisions of the Department stating that the workability of any coal will ultimately be determined by two offsetting factors: (a) its character and heat-giving quality, whence comes its value, and (b) its accessibility, quantity, thickness, depth and other conditions that affect the cost of this extraction.

Clear Creek Inn Corporation, 7 IBLA 200 (Sept. 11, 1972) 79 I.D. 571

COLOR OR CLAIM OF TITLE

GENERALLY

The purpose and intent of the Color of Title Act, 43 U.S.C. §§ 1068, 1068a, 1068b (1970) is to provide a legal method whereby citizens, relying in good faith upon title or claim derived from some source other than the government, and who have continued in peaceful, adverse possession of public land for the prescribed period of 20 years and had made valuable improvements, or have reduced some part of the land to cultivation, might acquire title thereto. However, the statute was not intended to provide a means for obtaining a patent by the mere occupation of public land under a mere pretense of title or claim, or a title or claim which the claimant had knowledge or good reason to believe was not in good title.

One who has not reached his majority (i.e. is a minor) may acquire title by adverse possession. However, he must show that he claims the land as against everyone. If he resides on the land with his mother, who has knowledge of the defective title, he is chargeable with that knowledge.

Minnie E. Wharton, John W. Wharton, Ruth Wharton James, Carroll Wharton, Iris Wharton Bartyl, Marvin Wharton, Thomas Wharton, Betty Wharton Zink, Faye Wharton Pamperien, and Samuel Wharton, 4 IBLA 287 (Feb. 2, 1972) 79 I.D. 6

A quiet title decree by a state court may not be relied upon by an applicant under the Color of Title Act as giving color of title to support a class 1 claim where the holding of the land under the decree falls short of the 20-year statutory period required.

The mere payment of property taxes assessed by a county is not sufficient, alone, to constitute a holding of land by the taxpayer under a claim or color of title as required by the Color of Title Act.

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

Under the Color of Title Act the requisite holding of land under some claim or color of title is not satisfied because of changes in the movement of a river affecting the riparian land, where the applicant has no basis for believing he had title to the land derived from some source other than the United States.

Harold C. Rosenbaum, 5 IBLA 76 (Mar. 3, 1972) 79 I.D. 38

Where, by the alteration of a river channel, the private land along the south bank was eroded away and the withdrawn federal land on the north bank was increased by accretion and, subsequently, the river made an avulsive return to its approximate original position, a class 1 application to purchase the accreted land under the Color-of-Title Act is properly rejected because the accreted land came under the influence of the withdrawal as it formed against the withdrawn land, and withdrawn land is not subject to the Color-of-Title Act.

Margaret C. More, 5 IBLA 252 (Mar. 23, 1972)

Where the deed to the color of title claimant specifically excludes the land claimed, the claimant has not established color of title. In those circumstances, the claimant relying on such a deed fails to demonstrate a justifiable reason for believing he had good title and therefore does not satisfy the good faith test of the Color of Title Act, as amended, 43 U.S.C. §§ 1068, 1068a, 1068b (1970).

"Color of title." Land occupied by one purportedly claiming under color of title, but who does not establish that the land in issue was conveyed to him by an instrument which on its face purported to convey the land in issue, is not thereby removed from the category of "vacant" public lands.

S. V. Wantrup, Wallace Hardin, 5 IBLA 286 (Apr. 13, 1972)

An application to purchase public lands under the Color of Title Act is properly rejected when the applicant can not show title derived from a source other than the United States, or an instrument conveying title, but merely relies on good faith occupancy and adverse possession.

Salmon River Canal Co., Ltd., 7 IBLA 182 (Sept. 1, 1972)

A color of title application must be rejected where there is not shown an instrument, which, on its face, purports to convey the land in issue.

A color of title application based entirely upon a mistaken belief that the tract is embraced within one's own holdings is not acceptable.

Marcus Rudnick and Marcia Rudnick, 8 IBLA 65 (Oct. 26, 1972)

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS

A quiet title decree by a state court may not be relied upon by an applicant under the Color of Title Act as giving color of title to support a class 1 claim where the holding of the land under the decree falls short of the 20-year statutory period required.

Harold C. Rosenbaum, 5 IBLA 76 (Mar. 3, 1972) 79 I.D. 38

Where, by the alteration of a river channel, the private land along the south bank was eroded away and the withdrawn federal land on the north bank was increased by accretion and, subsequently, the river made an avulsive return to its approximate original position, a class 1 application to purchase the accreted land under the Color-of-Title Act is properly rejected because the accreted land came under the influence of the withdrawal as it formed against the withdrawn land, and withdrawn land is not subject to the Color-of-Title Act.

Margaret C. More, 5 IBLA 252 (Mar. 23, 1972)

A color of title application must be rejected where there is not shown an instrument, which, on its face, purports to convey the land in issue.

A color of title application based entirely upon a mistaken belief that the tract is embraced within one's own holdings is not acceptable.

Marcus Rudnick and Marcia Rudnick, 8 IBLA 65 (Oct. 26, 1972)

DESCRIPTION OF LAND

Where the deed to the color of title claimant specifically excludes the land claimed, the claimant has not established color of title. In those circumstances, the claimant relying on such a deed fails to demonstrate a justifiable reason for believing he had good title and therefore does not satisfy the good faith test of the Color of Title Act, as amended, 43 U.S.C. §§ 1068, 1068a, 1068b (1970).

S. V. Wantrup, Wallace Hardin, 5 IBLA 286 (Apr. 13, 1972)

A color of title application must be rejected where there is not shown an instrument, which, on its face, purports to convey the land in issue.

A color of title application based entirely upon a mistaken belief that the tract is embraced within one's own holdings is not acceptable.

Marcus Rudnick and Marcia Rudnick, 8 IBLA 65 (Oct. 26, 1972)

GOOD FAITH

Good faith in adverse possession requires that a claimant honestly believed there was no defect in his title and the Department may

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH--Continued

consider whether such belief was unreasonable in the light of the facts then actually known or available to him. Once it is established that the claimant knew that the land was owned by the government and that he did not have a valid title, he is presumed to know that under the law he cannot acquire title or any right to the land merely by continuing to occupy it. There can be no such thing as good faith in an adverse holding where the party knows he has no title or fails to demonstrate a rationally justifiable reason for believing that he had title.

Minnie E. Wharton, John W. Wharton, Ruth Wharton James, Carroll Wharton, Iris Wharton Bartyl, Marvin Wharton, Thomas Wharton, Betty Wharton Zink, Faye Wharton Pamperien, and Samuel Wharton, 4 IBLA 287 (Feb. 2, 1972) 79 I.D. 6

Where the deed to the color of title claimant specifically excludes the land claimed, the claimant has not established color of title. In those circumstances, the claimant relying on such a deed fails to demonstrate a justifiable reason for believing he had good title and therefore does not satisfy the good faith test of the Color of Title Act, as amended, 43 U.S.C. §§ 1068, 1068a, 1068b (1970).

S. V. Wantrup, Wallace Hardin, 5 IBLA 286 (Apr. 13, 1972)

CONSTITUTIONAL LAW

In an administrative proceeding to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for impartial hearing are provided in accordance with the Administrative Procedure Act. 5 U.S.C. §§ 551 et seq. (1970).

United States of America v. Raymond Bass, Betty Yeck, et al., 6 IBLA 113 (June 5, 1972)

The marketability test of discovery of a valuable mineral deposit under the mining laws does not violate due process of law as being unconstitutionally vague, or as being unlawful administrative legislation.

A mining claimant has not been denied due process when his claims are contested assertedly because a permit has been granted to a museum to perform archaeological work under the Antiquities Act, and where there was some prehearing newspaper publicity that the contest was being instituted but the claimant does not show that there was any unfairness in the contest proceeding itself.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

The Department of the Interior has no authority to grant an application under the public land laws contrary to a statute of Congress; this Department is not the proper forum to decide whether or not the statute is constitutional.

Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (Nov. 22, 1972)

CONTESTS AND PROTESTS
(See also Rules of Practice)

GENERALLY

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

Don E. Jonz, 5 IBLA 204 (Mar. 20, 1972)

The pendency of a contest charging that certain mining claims are null and void for lack of discovery and other grounds is not a sufficient basis, under 30 U.S.C. § 28b (1970), to grant a deferment of annual assessment work.

James R. Eck, 6 IBLA 263 (June 29, 1972)

A report of field examination is not evidence on which a desert land final proof may be rejected and the entry cancelled. Where final proof asserts full compliance with the law, and its showings are questioned, a contest complaint should be initiated to afford the entryman an opportunity for a hearing.

Calvin L. Howard, 6 IBLA 285 (June 30, 1972)

Despite factual concessions by counsel for the Government, the Board is not precluded from reviewing the entire record and determining whether, and to what extent, rights have been earned under the public land laws.

United States v. William Leonard Grediagin, 7 IBLA 1 (July 24, 1972)

Where a contest record clearly establishes that the house on a homestead entry is not habitable at the time of final proof, the entry must be canceled.

United States v. Leonard F. Nelson, 8 IBLA 294 (Dec. 6, 1972)

A mining claim is properly declared null and void when contestee fails to answer timely a government contest complaint which charged that there had not been a discovery within the claim, and the complaint and regulation provide that failure to answer within 30 days will be taken as an admission of the allegations of the complaint.

United States v. Frank A. Spaulding and Wallace Spaulding, 8 IBLA 297 (Dec. 6, 1972)

Where the Government has made a prima facie showing of a lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon claimant.

United States v. Humboldt Placer Mining Company and Del De Rosier, 8 IBLA 407 (Dec. 20, 1972) 79 I.D. 709

CONTRACTS
(See also Rules of Practice)

CONSTRUCTION AND OPERATION

Generally

Where a contractor performed certain services in connection with the renovation of a steam generation system in a heating plant pursuant to a purchase order which provided that the total cost of the work was not to exceed $1,250, his claim for an additional payment above that amount based solely upon his understanding that the limitation applied only to the expenses of each employee engaged in the work is denied upon the evidence presented.

Appeal of Ray's Welding & Boiler Repair, IBCA-949-1-72
(June 15, 1972)

Actions of Parties

Where, under a contract for the construction of a dam calling for excavation of a cutoff trench to sound rock (shown on the plans and specifications to be at a depth of 60 feet), the Government first erroneously staked the depth of the trench to 28 feet and thereafter to 42 feet before rock was ultimately reached at 60 feet, and the contracting officer issued a change order to compensate the contractor for certain additional expenses caused thereby, including the increased cost of dewatering the trench at the specified depth, but refused to provide for the increased cost of backfilling on the ground that the contractor was charged at the prebidding stage with the knowledge that backfilling would be required at the 60 foot depth, the contractor was also entitled to an equitable adjustment for its additional cost of backfilling resulting therefrom. The issuance of the change order constituted an acknowledgement of Government responsibility for the direct consequences of the erroneous staking and it was therefore inconsistent to include the dewatering costs but not to compensate for the backfilling as well.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

Where a contract bid invitation provided for alternative methods for the construction of a road, and the specifications required the placement of 4 inches of surfacing material instead of the 6 inches shown in the plans without indicating any change in elevation or in the specified cross-section profiles, the contractor's action to substantially complete the subgrade elevation 2 inches higher in order to achieve the same finished surface elevation and the acquiescence of the Government supervisor constituted a contemporaneous interpretation of ambiguous specifications. The ambiguity having been resolved by conduct of the parties amounting to an agreed upon, reasonable interpretation of the specifications, subsequent directions by the Government to change the subgrade elevation were compensable contract changes.

Appeal of R. A. Erwin, Contractor, IBCA-863-8-70
(July 14, 1972) 79 I.D. 539

Changed Conditions (Differing Site Conditions)

Where a contract for the construction of a road indicated that the material to be excavated in roadway excavation was unclassified and the specifications and logs of exploration of test pits referred to the existence of rock at the site, a contractor was unwarranted in assuming that roadway excavation came within the definition of common excavation, which excluded rock, and that rock would not be encountered in such excavation.

A contractor under a contract for the construction of a road, which alleged that it was prejudiced by the Government's failure to disclose the existence of mass-haul diagrams showing the location and quantities of excavation, fill and waste, but which made no inquiry therefor, was not warranted in assuming by virtue of a contract drawing of a "typical" section with cut and fill approximately balancing, the roadway as constructed would be a balanced half-cut, half-fill, "simple" road, where a profile drawing of the roadway revealed numerous sections of cuts and fills at centerline, the contract provided for payment for overhaul of excavation for the roadway beyond a free haul distance of 1000 feet, and an adequate site investigation and examination of other contractual data all should have indicated to the contrary, since a typical section by accepted practice is not intended to show a specific relationship between the amounts of cut and fill to be expected at a given location.

Where a contractor under a contract for the construction of a tunnel, which provided that cavities or fissures may be encountered, in the course of excavation in limestone found and was required to fill in solution caverns (the presence of which in limestone is common) with grout and grout sand, the existence of such caverns did not constitute a changed condition. Utilization of the grout and grout sand, rather than concrete, to fill in the voids was contemplated by the contract and was not an attempt by the Government to take unreasonable advantage of the contractor's erroneously low bid for grout sand, the correction of which is beyond the Board's jurisdiction.

Where a contractor under a contract calling for the construction of a tunnel and an access shaft extending 200 feet downward from ground surface to the gate chamber in the tunnel excavated the shaft by means of blasting, and subsequently the Government redesigned the shaft, in part due to a funnel-shaped excavation caused by the contractor's blasting technique, the contractor is not entitled to be compensated for the cost of refilling the funnel-shaped excavation since the record does not establish that such cost is attributable to a changed condition rather than to the contractor's blasting methods.

Under a contract for the construction of a dam and other related work, providing that a certain borrow area contained materials of a quality suitable for processing to meet the requirements of the specifications for coarse aggregate, and authorizing the contractor to furnish such material from other sources, the contractor's claim for the cost of processing such material, submitted on the theory that the Government misrepresented the suitability of the specified source and that the condition of the borrow area differed materially from that indicated in the contract, is denied, since processing was expressly contemplated by the contract and the contractor neither sought nor needed to procure such material from the other available sources.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions (Differing Site Conditions)--Continued

The topography of the land on a project site under a contract for tree thinning does not constitute a changed condition of the first category (subsurface or latent physical conditions differing materially from those indicated in the contract) since the ground is a patent surface condition which had been examined by appellant during a pre-bid tour.

A claim that the contractor was misled by unclear or ambiguous contract provisions is denied where no evidence is presented supporting the reasonableness of appellant's interpretation, reliance on the alleged misleading interpretation, or that site conditions differed from the contract indications.

Appeal of R. G. Moore, d/b/a R. G. Moore Co., IBCA-963-4-72 (Nov. 10, 1972)

Changes and Extras

Where the evidence failed to establish that various malfunctions in fire alarm systems installed by the contractor were the contractor's responsibility under warranty and guarantee clauses, a site visit and work performed by the contractor during such visit pursuant to directives of the contracting officer constituted compensable work.

Appeal of Fire Detection Service, Inc., IBCA-901-4-71 (Mar. 29, 1972) 79 I.D. 125

Where, under a contract for the construction of a dam calling for excavation of a cutoff trench to sound rock (shown on the plans and specifications to be at a depth of 60 feet), the Government first erroneously staked the depth of the trench to 28 feet and thereafter to 42 feet before rock was ultimately reached at 60 feet, and the contracting officer issued a change order to compensate the contractor for certain additional expenses caused thereby, including the increased cost of dewatering the trench at the specified depth, but refused to provide for the increased cost of backfilling on the ground that the contractor was charge at the prebidding stage with the knowledge that backfilling would be required at the 60 foot depth, the contractor was also entitled to an equitable adjustment for its additional cost of backfilling resulting therefrom. The issuance of the change order constituted an acknowledgement of Government responsibility for the direct consequences of the erroneous staking and it was therefore inconsistent to include the dewatering costs but not to compensate for the backfilling as well.

Under a provision relating to borrow operations, of a contract for the construction of a dam, which required the contractor to (i) develop and submit for approval a plan for the production of proper proportions of Zone 1, 2 and 3 materials and (ii) irrigate Zone 1 material in borrow pits at least 30 days prior to anticipated use, and which authorized the Government to designate limits or locations of borrow pits in the borrow areas designated, upon a failure of the contractor to submit such a plan prior to commencement of borrow operations and to irrigate 30 days in advance, the Government was entitled to issue directions for the development, use

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

and irrigation of the borrow areas and such directions did not constitute a compensable change or relieve the contractor of its contractual responsibilities.

A contractor under a contract for the construction of a road, which alleged that it was prejudiced by the Government's failure to disclose the existence of mass-haul diagrams showing the location and quantities of excavation, fill and waste, but which made no inquiry therefor, was not warranted in assuming by virtue of a contract drawing of a "typical" section with cut and fill approximately balancing, the roadway as constructed would be a balanced half-cut, half-fill, "simple" road, where a profile drawing of the roadway revealed numerous sections of cuts and fills at centerline, the contract provided for payment for overhaul of excavation for the roadway beyond a free haul distance of 1000 feet, and an adequate site investigation and examination of other contractual data all should have indicated to the contrary, since a typical section by accepted practice is not intended to show a specific relationship between the amounts of cut and fill to be expected at a given location.

Where a contractor under a contract for the construction of a tunnel, which provided that cavities or fissures may be encountered, in the course of excavation in limestone found and was required to fill in solution caverns (the presence of which in limestone is common) with grout and grout sand, the existence of such caverns did not constitute a changed condition. Utilization of the grout and grout sand, rather than concrete, to fill in the voids was contemplated by the contract and was not an attempt by the Government to take unreasonable advantage of the contractor's erroneously low bid for grout sand, the correction of which is beyond the Board's jurisdiction.

A contract for the construction of a dam and other related work which afforded the Government the right to design, test, adjust and control the concrete mixes necessary for construction, should be regarded as containing an implicit requirement that such right be exercised with reasonable regard for the pumpability and placeability of the mixes designed. Where the record established that the Government did not take those factors sufficiently into account with respect to certain mixes, a constructive change occurred and the contractor is entitled to be compensated for the delay and disruption of its work resulting therefrom.

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

Where a contract bid invitation provided for alternative methods for the construction of a road, and the specifications required the placement of 4 inches of surfacing material instead of the 6 inches shown in the plans without indicating any change in elevation or in the specified cross-section profiles, the contractor's action to substantially complete the subgrade elevation 2 inches higher in order to achieve the same finished surface elevation and the acquiescence of the Government supervisor constituted a contemporaneous interpretation of ambiguous specifications. The ambiguity having been resolved by conduct of the

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

parties amounting to an agreed upon, reasonable interpretation of the specifications, subsequent directions by the Government to change the subgrade elevation were compensable contract changes.

Appeal of R. A. Erwin, Contractor, IBCA-863-8-70
(July 14, 1972) 79 I.D. 539

A claim prosecuted by a grading subcontractor in the name of the prime contractor and based upon the alleged improper refusal by a resident engineer to approve a borrow pit for use within a reasonable scraper haul of fill areas requiring the use of borrow is denied where the grading subcontractor failed to follow known and established procedures for obtaining timely review of the resident engineer's decision by the district engineer before the borrow forming the basis of the claim was placed, thereby foreclosing the Government from exercising options which would otherwise have been available to it and which the procedures established for review of subordinate's decisions were designed to secure.

Appeal of John H. Moon & Sons, IBCA-815-12-69
(July 31, 1972) 79 I.D. 465

In determining the number of acres contained within the project area, the Board finds that the area is to be measured horizontally where such method of measurement is clearly manifested by all contract provisions relating to measurement and spacing.

Appeal of R. G. Moore, d/b/a R. G. Moore Co.,
IBCA-963-4-72 (Nov. 10, 1972)

Contracting Officer

Where in the course of an extended hearing of an appeal by a contractor under a contract for the construction of a dam and related work, substantial testimony was taken, accompanied by the introduction of numerous exhibits, without objection by the Government, in connection with certain claims relating to allegedly harsh and unworkable concrete ordered by the Government, only some of which were expressly considered by the contracting officer in his various findings of fact, a remand of the unconsidered claims to the contracting officer for additional findings is not required.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

A claim prosecuted by a grading subcontractor in the name of the prime contractor and based upon the alleged improper refusal by a resident engineer to approve a borrow pit for use within a reasonable scraper haul of fill areas requiring the use of borrow is denied where the grading subcontractor failed to follow known and established procedures for obtaining timely review of the resident engineer's decision by the district engineer before the borrow forming the basis of the claim was placed, thereby foreclosing the Government from exercising options which would

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contracting Officer--Continued

otherwise have been available to it and which the procedures established for review of subordinate's decisions were designed to secure.

Appeal of John H. Moon & Sons, IBCA-815-12-69
(July 31, 1972) 79 I.D. 465

Drawings and Specifications

Where the specifications clearly refer to the disputed work as part of the contract work, a claim for an equitable adjustment for a change based upon the omission of details in the drawings is denied in accordance with Clause 2 of Standard Form 23A (1964 Edition), which states that anything mentioned in the specifications and not shown on the drawings shall be of like effect as if shown or mentioned in both.

Appeal of Industrial Contractors, Inc.,
IBCA-940-11-71 (Apr. 19, 1972)

Where, under a contract for the construction of a dam calling for excavation of a cutoff trench to sound rock (shown on the plans and specifications to be at a depth of 60 feet), the Government first erroneously staked the depth of the trench to 28 feet and thereafter to 42 feet before rock was ultimately reached at 60 feet, and the contracting officer issued a change order to compensate the contractor for certain additional expenses caused thereby, including the increased cost of dewatering the trench at the specified depth, but refused to provide for the increased cost of backfilling on the ground that the contractor was charged at the prebidding stage with the knowledge that backfilling would be required at the 60 foot depth, the contractor was also entitled to an equitable adjustment for its additional cost of backfilling resulting therefrom. The issuance of the change order constituted an acknowledgement of Government responsibility for the direct consequences of the erroneous staking and it was therefore inconsistent to include the dewatering costs but not to compensate for the backfilling as well.

A provision, under a contract for the construction of a dam, a key feature of which called for excavation of a cutoff trench to sound rock (shown on the plans and specifications to be 60 feet), which permitted the Government to vary the slopes, grades or dimensions of the excavations from those specified when necessary or desirable was not intended to apply to major revisions associated with correcting the erroneous staking of the trench to depths of 28 feet and 42 feet, respectively, where the serious difficulties encountered in reaching the depth specified could not be regarded as having resulted from a mere variation.

Under a provision relating to borrow operations, of a contract for the construction of a dam, which required the contractor to (i) develop and submit for approval a plan for the production of proper proportions of Zone 1, 2 and 3 materials and (ii) irrigate Zone 1 material in borrow pits at least 30 days prior to acticipated use, and which authorized the Government to designate limits or locations of borrow pits in the borrow areas designated, upon a failure of the contractor to submit such a plan prior to commencement of borrow operations and to irrigate 30 days in advance, the Government was entitled to issue directions for the development, use

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

and irrigation of the borrow areas and such directions did not constitute a compensable change or relieve the contractor of its contractual responsibilities.

Where a contract for the construction of a road indicated that the material to be excavated in roadway excavation was unclassified and the specifications and logs of exploration of test pits referred to the existence of rock at the site, a contractor was unwarranted in assuming that roadway excavation came within the definition of common excavation, which excluded rock, and that rock would not be encountered in such excavation.

A contractor under a contract for the construction of a road, which alleged that it was prejudiced by the Government's failure to disclose the existence of mass-haul diagrams showing the location and quantities of excavation, fill and waste, but which made no inquiry therefor, was not warranted in assuming by virtue of a contract drawing of a "typical" section with cut and fill approximately balancing, the roadway as constructed would be a balanced half-cut, half-fill, "simple" road, where a profile drawing of the roadway revealed numerous sections of cuts and fills at centerline, the contract provided for payment for overhaul of excavation for the roadway beyond a free haul distance of 1000 feet, and an adequate site investigation and examination of other contractual data all should have indicated to the contrary, since a typical section by accepted practice is not intended to show a specific relationship between the amounts of cut and fill to be expected at a given location.

Under a contract for the construction of a dam and other related work, providing that a certain borrow area contained materials of a quality suitable for processing to meet the requirements of the specifications for coarse aggregate, and authorizing the contractor to furnish such material from other sources, the contractor's claim for the cost of processing such material, submitted on the theory that the Government misrepresented the suitability of the specified source and that the condition of the borrow area differed materially from that indicated in the contract, is denied, since processing was expressly contemplated by the contract and the contractor neither sought nor needed to procure such material from the other available sources.

A contract for the construction of a dam and other related work which afforded the Government the right to design, test, adjust and control the concrete mixes necessary for construction, should be regarded as containing an implicit requirement that such right be exercised with reasonable regard for the pumpability and placeability of the mixes designed. Where the record established that the Government did not take those factors sufficiently into account with respect to certain mixes, a constructive change occurred and the contractor is entitled to be compensated for the delay and disruption of its work resulting therefrom.

A contractor whose work was disrupted and damaged as a result of the bursting of an oil pipeline (owned by a third party), which ran under the contract site and over which the contractor had, with the Government's approval, located its concrete batching plant, was not entitled to be compensated by the Government for the damage sustained on the

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

ground that the damage resulted from the Government's failure to discharge its implied contractual obligation to provide a proper and safe construction site, in the absence of proof that the Government was responsible for the bursting, since the contractor bore the risk of loss under the Permits and Responsibilities clause of the contract.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

Where a contract bid invitation provided for alternative methods for the construction of a road, and the specifications required the placement of 4 inches of surfacing material instead of the 6 inches shown in the plans without indicating any change in elevation or in the specified cross-section profiles, the contractor's action to substantially complete the subgrade elevation 2 inches higher in order to achieve the same finished surface elevation and the acquiescence of the Government supervisor constituted a contemporaneous interpretation of ambiguous specifications. The ambiguity having been resolved by conduct of the parties amounting to an agreed upon, reasonable interpretation of the specifications, subsequent directions by the Government to change the subgrade elevation were compensable contract changes.

Appeal of R. A. Erwin, Contractor, IBCA-863-8-70
(July 14, 1972) 79 I.D. 539

Where the specifications encompass the disputed work a claim for an equitable adjustment based upon the omission of details in a drawing will be denied under the terms of a clause making mention in either sufficient and on the further ground that a construction giving effect and meaning to all provisions will be preferred to one that leaves certain provisions superfluous or in conflict with each other.

Appeal of Thompson Construction, Inc., IBCA-965-5-72
(Nov. 8, 1972)

General Rules of Construction

A provision, under a contract for the construction of a dam, a key feature of which called for excavation of a cutoff trench to sound rock (shown on the plans and specifications to be 60 feet), which permitted the Government to vary the slopes, grades or dimensions of the excavations from those specified when necessary or desirable was not intended to apply to major revisions associated with correcting the erroneous staking of the trench to depths of 28 feet and 42 feet, respectively, where the serious difficulties encountered in reaching the depth specified could not be regarded as having resulted from a mere variation.

Where a contract for the construction of a road indicated that the material to be excavated in roadway excavation was unclassified and the specifications and logs of exploration of test pits referred to the existence of rock at the site, a contractor was unwarranted in assuming that roadway excavation came within the definition of common excavation, which excluded rock, and that rock would not be encountered in such excavation.

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction--Continued

A contractor under a contract for the construction of a dam whose claims fall within the purview of the of the Changes and Changed Conditions clauses and who asserts that its records provide a proper basis for evaluating costs of labor and materials but that its equipment records are incomplete, is not entitled to recover such equipment costs pursuant to a clause of the contract providing that any allowance for equipment used in performing extra work shall be determined from the schedule of average ownership expense listed in "Contractors' Equipment Ownership Expense" published by the Associated General Contractors of America, where the provision also states that the application of such allowances to changes ordered pursuant to the Changes and Changed Conditions clauses is optional with the contracting officer and the evidence in the record provides a more suitable basis for establishing the contractor's equipment costs.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

In determining the number of acres contained within the project area, the Board finds that the area is to be measured horizontally where such method of measurement is clearly manifested by all contract provisions relating to measurement and spacing.

Appeal of R. G. Moore, d/b/a R. G. Moore Co., IBCA-963-4-72 (Nov. 10, 1972)

Notices

A motion to dismiss will be granted where the record on the motion shows that the Government has been prejudiced by the contractor's delay of at least nine years in presenting notices of claims, or by failing to present to the contracting officer for that period of time data with respect to claims as to which notice was initially given. Eggers & Higgins v. United States, 185 Ct. Cl. 765 (1968).

Appeal of Mishara Construction Company, Inc., IBCA-869-8-70 (Mar. 13, 1972) 79 I.D. 57

A claim prosecuted by a grading subcontractor in the name of the prime contractor and based upon the alleged improper refusal by a resident engineer to approve a borrow pit for use within a reasonable scraper haul of fill areas requiring the use of borrow is denied where the grading subcontractor failed to follow known and established procedures for obtaining timely review of the resident engineer's decision by the district engineer before the borrow forming the basis of the claim was placed, thereby foreclosing the Government from exercising options which would otherwise have been available to it and which the procedures established for review of subordinate's decisions were designed to secure.

Appeal of John H. Moon & Sons, IBCA-815-12-69
(July 31, 1972) 79 I.D. 465

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Payments

Where neither the contractor's obligations nor the Government's rights under warranty and guarantee clauses were dependent on a withholding of money, a withholding for the purpose of compelling the contractor to comply with Government directives under warranty and guarantee clauses was improper. A withholding insofar as based on the contractor's failure to furnish all "as built" drawings required by the contract was held to be proper.

Appeal of Fire Detection Service, Inc., IBCA-901-4-71
(Mar. 29, 1972) 79 I.D. 125

A contractor under a contract for the construction of a dam, which provides that progress payments will be made to the contractor on estimates approved by the contracting officer, was not entitled to discontinue work on the ground that the Government's progress payments were allegedly erroneous and inadequate since implicit in the term "estimate" is lack of finality and the possibility of further revision. Where the parties are in serious disagreement over the validity of claims submitted by the contractor or as to the amounts owed for changes, extra work, etc., it is to be expected that progress payments will correspond to the amounts which the contracting officer determines are owed by the Government.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

Subcontractors and Suppliers

A claim prosecuted by a grading subcontractor in the name of the prime contractor and based upon the alleged improper refusal by a resident engineer to approve a borrow pit for use within a reasonable scraper haul of fill areas requiring the use of borrow is denied where the grading subcontractor failed to follow known and established procedures for obtaining timely review of the resident engineer's decision by the district engineer before the borrow forming the basis of the claim was placed, thereby foreclosing the Government from exercising options which would otherwise have been available to it and which the procedures established for review of subordinate's decisions were designed to secure.

Appeal of John H. Moon & Sons, IBCA-815-12-69
(July 31, 1972) 79 I.D. 465

Warranties

Where neither the contractor's obligations nor the Government's rights under warranty and guarantee clauses were dependent on a withholding of money, a withholding for the purpose of compelling the contractor to comply with Government directives under warranty and guarantee clauses was improper. A withholding insofar as based on the contractor's failure to furnish all "as built" drawings required by the contract was held to be proper.

Where the evidence failed to establish that various malfunctions in fire alarm systems installed by the

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Warranties--Continued

contractor were the contractor's responsibility under warranty and guarantee clauses, a site visit and work performed by the contractor during such visit pursuant to directives of the contracting officer constituted compensable work.

Appeal of Fire Detection Service, Inc., IBCA-901-4-71 (Mar. 29, 1972) 79 I.D. 125

An appeal claiming the costs of repair of corrosion in four stainless steel clad surge tanks is denied where the Government has discharged its burden in showing by a preponderance of the evidence of record that the most probable causes of corrosion were welding defects, not allowed by the specifications, and contractor's failure to protect the interiors of the tanks from weld and gouge spatter.

The Government's remedies under an express warranty extending for three years after acceptance of the work are not vitiated by inspection and acceptance barring all but latent defects since warranty remedies are cumulative.

Appeal of R. H. Fulton, Contractor, IBCA-769-3-69 (July 21, 1972) 79 I.D. 547

DISPUTES AND REMEDIES

Generally

A motion to dismiss will be granted where the record on the motion shows that the Government has been prejudiced by the contractor's delay of at least nine years in presenting notices of claims, or by failing to present to the contracting officer for that period of time data with respect to claims as to which notice was initially given. Eggers & Higgins v. United States, 185 Ct. Cl. 765 (1968).

Where claims presented on appeal by the contractor are in fact claims of subcontractors which, on the record, appear barred as enforceable claims against the contractor by a state statute of limitations, they will be dismissed.

Appeal of Mishara Construction Company, Inc., IBCA-869-8-70 (Mar. 13, 1972) 79 I.D. 57

Appeals

Where claims presented on appeal by the contractor are in fact claims of subcontractors which, on the record, appear barred as enforceable claims against the contractor by a state statute of limitations, they will be dismissed.

Appeal of Mishara Construction Company, Inc., IBCA-869-8-70 (Mar. 13, 1972) 79 I.D. 57

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Appeals--Continued

In the absence of a Board rule requiring that the Board member who presided at the hearing of an appeal prepare or participate in the decision, the failure of the Board to assign the preparation of an opinion to a retired, former member who conducted the hearing is not a violation of a contractor's constitutional rights, even where credibility and the demeanor of witnesses are in issue, since procedural due process requires only that all of the testimony, exhibits, briefs and other documentary material in the record be carefully reviewed and considered by the members of the Board rendering the decision.

A claim to compensate a contractor, for the cost of additional grouting delayed is dismissed where there is insufficient evidence in the record to support a finding that the grouting work was changed by the erroneous staking of a cutoff trench since the delay in grouting was caused by the delay in completing excavation of the trench for which no relief is available under the contract, in the absence of a suspension of work clause.

Where in the course of an extended hearing of an appeal by a contractor under a contract for the construction of a dam and related work, substantial testimony was taken, accompanied by the introduction of numerous exhibits, without objection by the Government, in connection with certain claims relating to allegedly harsh and unworkable concrete ordered by the Government, only some of which were expressly considered by the contracting officer in his various findings of fact, a remand of the unconsidered claims to the contracting officer for additional findings is not required.

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

Where a contractor's case is pending in the Court of Claims, involving a Board decision which upheld a termination for default, and the contractor takes the position that the Board should not proceed with a second appeal (concerning the propriety of an excess cost assessment arising out of the termination) while the case is pending in Court, thereby avoiding needless expenditure of time and money, if its petition to the Court that the Board be directed to sustain its excess costs claim is granted, a motion by the Government to activate the appeal (grounded on potential prejudice to it resulting from delay in proceeding and a Court rule allegedly requiring a counterclaim based upon the excess costs claim to be asserted during the pendency of the default termination case before the Court) is denied in order to give the parties an opportunity to request the Court to instruct the Board, under P.L. 92-415, whether or not to defer action on the excess costs appeal until the Court acts on the default termination question.

Appeal of Steenberg Construction Company, IBCA-639-5-67 (Nov. 30, 1972)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof

A request for time extension because of unusually severe weather is denied where the contractor submits no proof that weather conditions were within the standards of excusability prescribed by Clause 5 of Standard Form 23A (1964 Edition), Termination for Default--Damages for Delay--Time Extensions.

A request for time extension because of transportation strike is denied where the contractor submits no proof that the strike delayed his performance.

Appeal of Industrial Contractors, Inc., IBCA-940-11-71 (Apr. 19, 1972)

A claim to compensate a contractor, for the cost of additional grouting delayed is dismissed where there is insufficient evidence in the record to support a finding that the grouting work was changed by the erroneous staking of a cutoff trench since the delay in grouting was caused by the delay in completing excavation of the trench for which no relief is available under the contract, in the absence of a suspension of work clause.

Where a contractor under a contract calling for the construction of a tunnel and an access shaft extending 200 feet downward from ground surface to the gate chamber in the tunnel excavated the shaft by means of blasting, and subsequently the Government redesigned the shaft, in part due to a funnel-shaped excavation caused by the contractor's blasting technique, the contractor is not entitled to be compensated for the cost of refilling the funnel-shaped excavation since the record does not establish that such cost is attributable to a changed condition rather than to the contractor's blasting methods.

A contractor whose work was disrupted and damaged as a result of the bursting of an oil pipeline (owned by a third party), which ran under the contract site and over which the contractor had, with the Government's approval, located its concrete batching plant, was not entitled to be compensated by the Government for the damage sustained on the ground that the damage resulted from the Government's failure to discharge its implied contractual obligation to provide a proper and safe construction site, in the absence of proof that the Government was responsible for the bursting, since the contractor bore the risk of loss under the Permits and Responsibilities clause of the contract.

A contractor in an appeal having a massive record, who alleges instances of inadequate payment under a contract for the construction of a dam, and in support thereof introduces into evidence various Government payment books unpaginated and some seven inches in thickness without clearly establishing such allegations by further specification or identification in such books, has not sustained its burden of proof, since it was not incumbent upon the Board to search the record "for errors that may be lurking the among labyrinths."

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

Where a contractor performed certain services in connection with the renovation of a steam generation system in a heating plant pursuant to a purchase order which provided that the total cost of the work was not to exceed $1,250, his claim for an additional payment above that amount based solely upon his understanding that the limitation applied only to the expenses of each employee engaged in the work is denied upon the evidence presented.

Appeal of Ray's Welding & Boiler Repair, IBCA-949-1-72 (June 15, 1972)

An appeal claiming the costs of repair of corrosion in four stainless steel clad surge tanks is denied where the Government has discharged its burden in showing by a preponderance of the evidence of record that the most probable causes of corrosion were welding defects, not allowed by the specifications, and contractor's failure to protect the interiors of the tanks from weld and gouge spatter.

Appeal of R. H. Fulton, Contractor, IBCA-769-3-69 (July 21, 1972) 79 I.D. 547

The contracting officer's determination of the hours properly chargeable to the Government under a rental of equipment contract will be sustained where the contractor asserts that the hours claimed are reflected in its records but fails to offer any evidence in support of the claims made.

Appeal of C.T.C. Construction, IBCA-941-11-71 (Sept. 26, 1972) 79 I.D. 607

The topography of the land on a project site under a contract for tree thinning does not constitute a changed condition of the first category (subsurface or latent physical conditions differing materially from those indicated in the contract) since the ground is a patent surface condition which had been examined by appellant during a pre-bid tour.

A claim that the contractor was misled by unclear or ambiguous contract provisions is denied where no evidence is presented supporting the reasonableness of appellant's interpretation, reliance on the alleged misleading interpretation, or that site conditions differed from the contract indications.

Appeal of R. G. Moore, d/b/a R. G. Moore Co., IBCA-963-4-72 (Nov. 10, 1972)

Damages

Measurement

A contractor under a contract for the construction of a dam whose claims fall within the purview of the Changes and Changed Conditions clauses and who asserts that its records provide a proper basis for evaluating costs of labor and materials but that its equipment records are incomplete, is not entitled to recover such equipment costs pursuant to a clause of the contract providing that any allowance for equipment used in performing extra work shall be determined from the schedule of average ownership expense listed in "Contractors' Equipment Ownership Expense" published by the Associated General Contractors of America, where the provision also states that the application of such allowances to changes

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Measurement--Continued

ordered pursuant to the Changes and Changed Conditions clauses is optional with the contracting officer and the evidence in the record provides a more suitable basis for establishing the contractor's equipment costs.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

Equitable Adjustments

Recovery by a contractor under a contract for the construction of a dam who alleged that all of its claims against the Government were inseparable and that payment should be made on the basis of its total expenditures less contract receipts is denied where the contractor's records were such that allocation of costs to specific claims could be made and the reasonableness of such total costs and the Government's responsibility therefor were not established. In such circumstances the Board found that resort to the jury verdict approach for determining the amount of the equitable adjustment was warranted, since the Government's evidence respecting costs was also not segregated to specific claims.

A contractor under a contract for the construction of a dam whose claims fall within the purview of the Changes and Changed Conditions clauses and who asserts that its records provide a proper basis for evaluating costs of labor and materials but that its equipment records are incomplete, is not entitled to recover such equipment costs pursuant to a clause of the contract providing that any allowance for equipment used in performing extra work shall be determined from the schedule of average ownership expense listed in "Contractors' Equipment Ownership Expense" published by the Associated General Contractors of America, where the provision also states that the application of such allowances to changes ordered pursuant to the Changes and Changed Conditions clauses is optional with the contracting officer and the evidence in the record provides a more suitable basis for establishing the contractor's equipment costs.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

Jurisdiction

In the absence of a contract provision authorizing a contract price adjustment for delay, claims for pay-for-delay are breach of contract claims not within the Board's jurisdiction.

Appeal of Mishara Construction Company, Inc., IBCA-869-8-70 (Mar. 13, 1972) 79 I.D. 57

Where an appeal record disclosed the existence of various disputes clearly cognizable under specific provisions of a contract for the construction of a dam, the Board is not deprived of jurisdiction over such disputes by virtue of the contractor's contention that they merged into and became part of a unitary, integrated claim for a "cardinal breach" arising out of the Government's course of conduct for which only the Court of Claims could grant adequate relief, since it is not for a board of contract appeals to determine that the cumulative

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

effect of claims redressable under various contract clauses, combined with other acts and non-acts of the Government traditionally regarded as breaches of contract, constitute a unitary, integrated claim for a breach of contract.

A claim to compensate a contractor, for the cost of additional grouting delayed is dismissed where there is insufficient evidence in the record to support a finding that the grouting work was changed by the erroneous staking of a cutoff trench since the delay in grouting was caused by the delay in completing excavation of the tranch for which no relief is available under the contract, in the absence of a suspension of work clause.

Where a contractor under a contract for the construction of a tunnel, which provided that cavities or fissures may be encountered, in the course of excavation in limestone found and was required to fill in solution caverns (the presence of which in limestone is common) with grout and grout sand, the existence of such caverns did not constitute a changed condition. Utilization of the grout and grout sand, rather than concrete, to fill in the voids was contemplated by the contract and was not an attempt by the Government to take unreasonable advantage of the contractor's erroneously low bid for grout sand, the correction of which is beyond the Board's jurisdiction.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

Claims for costs attributed to Government delays in relocating utility poles and in providing slope stakes arising on a project for the construction of a portion of the Natchez Trace Parkway (together with a derivative claim for stretchout and other delay costs) are dismissed as not within the purview of the Board's jurisdiction absent a pay-for-delay provision in the contract under which the claims would be cognizable.

Appeal of John H. Moon & Sons, IBCA-815-12-69
(July 31, 1972) 79 I.D. 465

Where four claims are asserted affirmatively for the first time in a notice of appeal and where thereafter the contractor fails to appeal the subsequent decision of the contracting officer denying the claims so asserted, the contracting officer's decision is final and conclusive under the express language of the Disputes Clause thereby requiring the dismissal of the four claims for lack of jurisdiction.

Appeal of C.I.C. Construction, IBCA-941-11-71
(Sept. 26, 1972) 79 I.D. 607

A claim asserted under the Suspension of Work clause for costs arising out of a delay in performance of a construction contract caused by the exhaustion of available funds following the Government's failure to appropriate additional monies necessary to enable a contractor to complete the work prior to the time established by the contract and the President's subsequent impounding of such

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

funds, which resulted in the contractor's election to stop work, was dismissed as being outside the Board's jurisdiction since the contract provided that the Government's liability for work costing in excess of a specified amount reserved and available for payment was contingent upon further appropriations and reservation, and the President's action was a sovereign act taken to halt inflation, neither of which is considered to be a stoppage by actual or constructive direction of the contracting officer in the administration of the contract within the meaning of the Suspension of Work clause.

Appeal of Granite Construction Company, IBCA-947-1-72 (Nov. 13, 1972) 79 I.D. 644

Where a contractor's case is pending in the Court of Claims, involving a Board decision which upheld a termination for default, and the contractor takes the position that the Board should not proceed with a second appeal (concerning the propriety of an excess cost assessment arising out of the termination) while the case is pending in Court, thereby avoiding needless expenditure of time and money, if its petition to the Court that the Board be directed to sustain its excess costs claim is granted, a motion by the Government to activate the appeal (grounded on potential prejudice to it resulting from delay in proceeding and a Court rule allegedly requiring a counterclaim based upon the excess costs claim to be asserted during the pendency of the default termination case before the Court) is denied in order to give the parties an opportunity to request the Court to instruct the Board, under P.L. 92-415, whether or not to defer action on the excess costs appeal until the Court acts on the default termination question.

Appeal of Steenberg Construction Company, IBCA-639-5-67 (Nov. 30, 1972)

Substantial Evidence

The contracting officer's determination of the hours properly chargeable to the Government under a rental of equipment contract will be sustained where the contractor asserts that the hours claimed are reflected in its records but fails to offer any evidence in support of the claims made.

Appeal of C.I.C. Construction, IBCA-941-11-71 (Sept. 26, 1972) 79 I.D. 607

Termination for Default

Where the default termination decision is appealed and held to be improper, the Government is without contractual authority under the Default Article to charge excess costs to the contractor without regard to whether a later decision assessing excess costs was appealed.

Appeal of Universal Engineered Systems, Inc., IBCA-900-4-71 (Mar. 16, 1972) 79 I.D. 94

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

A contractor under a contract for the construction of a dam, which provides that progress payments will be made to the contractor on estimates approved by the contracting officer, was not entitled to discontinue work on the ground that the Government's progress payments were allegedly erroneous and inadequate since implicit in the term "estimate" is lack of finality and the possibility of further revision. Where the parties are in serious disagreement over the validity of claims submitted by the contractor or as to the amounts owed for changes, extra work, etc., it is to be expected that progress payments will correspond to the amounts which the contracting officer determines are owed by the Government.

Where a contractor discontinued its work under a contract for the construction of a dam because the Government had allegedly breached the contract by failing to (1) make timely and adequate payments, (2) process claims promptly, (3) consider the claim on a unitary basis, and (4) grant adequate relief, the contracting officer was justified in terminating the contract for default, since a contractor is not permitted under the Disputes clause to abandon its work because of disagreement with the contracting officer's determinations and the record establishes that payments were made in accordance with the contract and the delay in processing claims and providing administrative relief was found to be largely attributable to the actions of the contractor.

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

Where a contractor's case is pending in the Court of Claims, involving a Board decision which upheld a termination for default, and the contractor takes the position that the Board should not proceed with a second appeal (concerning the propriety of an excess cost assessment arising out of the termination) while the case is pending in Court, thereby avoiding needless expenditure of time and money, if its petition to the Court that the Board be directed to sustain its excess costs claim is granted, a motion by the Government to activate the appeal (grounded on potential prejudice to it resulting from delay in proceeding and a Court rule allegedly requiring a counterclaim based upon the excess costs claim to be asserted during the pendency of the default termination case before the Court) is denied in order to give the parties an opportunity to request the Court to instruct the Board, under P.L. 92-415, whether or not to defer action on the excess costs appeal until the Court acts on the default termination question.

Appeal of Steenberg Construction Company, IBCA-639-5-67 (Nov. 30, 1972)

FORMATION AND VALIDITY

Bid Award

Where the notice of competitive bidding for upland oil and gas leases reserves to the Government the right to reject any and all bids and further states that any bonus bid

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Bid Award--Continued

considered as inadequate on the basis of the estimated value of the parcel will be rejected, a bonus bid of $10.95 per acre for land, whose oil and gas bonus value is estimated to be $20 per acre, may properly be rejected.

John M. Kelly, 5 IBLA 324 (Apr. 17, 1972)

Where an invitation to submit competitive bids for oil and gas leases reserves the right and discretion to reject any and all bids, regardless of the amount offered, and the high bid for a particular tract is much less than the government's estimated value of the tract, the high bid may properly be rejected for the reason of inadequacy of the cash bonus offered.

Kerr McGee Corporation, Cabot Corporation, Felmont Oil Corporation, Case-Pomeroy Oil Corporation, 6 IBLA 108 (June 5, 1972)

The competitive bidding requirement in the Outer Continental Shelf Lands Act for awarding oil and gas or sulfur leases is satisfied by due advertisement and a giving of an opportunity to bid, and contemplates that all bidders be placed upon the same plane of equality, and that they each bid upon the same terms and conditions set forth in the advertisements, and the pertinent statutes and in the Department's regulations. Competitive bidding does not require that more than one bid be submitted before the authorized officer, but only that the officer, by due advertisement, give opportunity for everyone to bid.

Tipperary Land & Exploration Corporation, 7 IBLA 270 (Sept. 19, 1972) 79 I.D. 596

Where an invitation to submit competetive bids for oil and gas leases reserves the right and discretion to reject any and all bids, regardless of the amount offered, and the high bid for a particular tract is less than 10 percent of the Government's estimated value of the tract, the high bid may properly be rejected for the reason of inadequacy of the cash bonus offered.

Antoine "Fats" Domino, 7 IBLA 375 (Sept. 29, 1972)

Where the notice of sale by competitive bidding for oil and gas leases reserves to the Government the right to reject any and all bids, and further states any bonus bid considered as inadequate on the basis of the estimated value of the parcel will be rejected, a bonus bid of $1 per acre is properly rejected where the estimated value of the parcel is greater than $1 per acre.

Howell Spear, 8 IBLA 93 (Nov. 6, 1972)

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Mistakes

Where a contractor under a contract for the construction of a tunnel, which provided that cavities or fissures may be encountered, in the course of excavation in limestone found and was required to fill in solution caverns (the presence of which in limestone is common) with grout and grout sand, the existence of such caverns did not constitute a changed condition. Utilization of the grout and grout sand, rather than concrete, to fill in the voids was contemplated by the contract and was not an attempt by the Government to take unreasonable advantage of the contractor's erroneously low bid for grout sand, the correction of which is beyond the Board's jurisdiction.

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

PERFORMANCE OR DEFAULT

Generally

The contracting officer's decision to partially terminate for default a supply contract by reason of defects alleged to exist in delivered equipment will be deemed improper where the equipment conforms to the contract requirements and the failure of the equipment to operate fully to the satisfaction of the Government is found to be caused by voltage variations in excess of specification limits.

Appeal of Universal Engineered Systems, Inc., IBCA-900-4-71 (Mar. 16, 1972) 79 I.D. 94

Breach

Where an appeal record disclosed the existence of various disputes clearly cognizable under specific provisions of a contract for the construction of a dam, the Board is not deprived of jurisdiction over such disputes by virtue of the contractor's contention that they merged into and became part of a unitary, integrated claim for a "cardinal breach" arising out of the Government's course of conduct for which only the Court of Claims could grant adequate relief, since it is not for a board of contract appeals to determine that the cumulative effect of claims redressable under various contract clauses, combined with other acts and non-acts of the Government traditionally regarded as breaches of contract, constitute a unitary, integrated claim for a breach of contract.

Where a contractor discontinued its work under a contract for the construction of a dam because the Government had allegedly breached the contract by failing to (1) make timely and adequate payments, (2) process claims promptly, (3) consider the claim on a unitary basis, and (4) grant adequate relief, the contracting officer was justified in terminating the contract for default, since a contractor is not permitted under the Disputes clause to abandon its work because of disgreement with the contracting officer's determinations and the record establishes that payments were made in accordance with the contract and the delay in processing claims and providing administrative relief was found to be largely attributable to the actions of the contractor.

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Excusable Delays

A request for time extension because of unusually severe weather is denied where the contractor submits no proof that weather conditions were within the standards of excusability prescribed by Clause 5 of Standard Form 23A (1964 Edition), Termination for Default--Damages for Delay--Time Extensions.

A request for time extension because of a transportation strike is denied where the contractor submits no proof that the strike delayed his performance.

Appeal of Industrial Contractors, Inc., IBCA-940-11-71 (Apr. 19, 1972)

Where the Government was found to be responsible for an indeterminate portion of a delay in having utility poles relocated on a road construction job and information having a direct bearing on the propriety of the amount of liquidated damages assessed was either in the possession of the Government or more accessible to it than it was to the appellant, no attempt should be made to apportion the delay between the parties and the Board therefore holds that the appellant is entitled to have the contract time extended to the date the contract was determined to be substantially complete.

Appeal of John H. Moon & Sons, IBCA-815-12-69 (July 31, 1972) 79 I.D. 465

Inspection

The Government's remedies under an express warranty extending for three years after acceptance of the work are not vitiated by inspection and acceptance barring all but latent defects since warranty remedies are cumulative.

Appeal of R. H. Fulton, Contractor, IBCA-769-3-69 (July 21, 1972) 79 I.D. 547

Suspension of Work

A claim asserted under the Suspension of Work clause for costs arising out of a delay in performance of a construction contract caused by the exhaustion of available funds following the Government's failure to appropriate additional monies necessary to enable a contractor to complete the work prior to the time established by the contract and the President's subsequent impounding of such funds, which resulted in the contractor's election to stop work, was dismissed as being outside the Board's jurisdiction since the contract provided that the Government's liability for work costing in excess of a specified amount reserved and available for payment was contingent upon further appropriations and reservation, and the President's action was a sovereign act taken to halt inflation, neither of which is considered to be a stoppage by actual or constructive direction of the contracting officer in the administration of the contract within the meaning of the Suspension of Work clause.

Appeal of Granite Construction Company, IBCA-947-1-72 (Nov. 13, 1972) 79 I.D. 644

CONVEYANCES

GENERALLY

Under the Mining Claims Occupancy Act, 30 U.S.C. § 703 (1970), the Secretary of the Interior may convey an interest in land under the administrative jurisdiction of the Forest Service to a "qualified applicant" only with the consent of the head of the administering agency.

Charles N. Olson, 5 IBLA 4 (Feb. 18, 1972)

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for that purpose.

Frederick Siemon, 6 IBLA 156 (June 8, 1972)

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for the purpose.

Lester J. Gendron, 6 IBLA 288 (July 3, 1972)

Private agreements do not control the disposition of federal public land. Rights to federal lands must be gained by compliance with the governing federal public land laws.

Any right under a notice of location required by the Act of April 29, 1950, is personal to the claimant filing the notice. A transferee of the claimant's possessory interest in a trade and manufacturing site cannot claim under his transferor's notice to avoid the effect of a withdrawal where the transferee had not filed his own notice or purchase application prior to the withdrawal.

Kennecott Copper Corporation, 8 IBLA 21 (Oct. 6, 1972) 79 I.D.636

INTEREST CONVEYED

An easement to the United States which authorizes use of an existing road, and location and construction of extensions and spurs to that road, does not authorize construction of a proposed road which would not be an extension nor spur of the existing road, but instead would be a relocation and by-pass of a portion of the existing road.

Laura E. Hunt and Chauncey G. Hunt, 7 IBLA 326 (Sept. 26, 1972)

COOPERATIVE AGREEMENTS

In a mining contest hearing relating to lands within a national forest, the Office of the General Counsel, Department of Agriculture, may properly appear in behalf of the Government pursuant to agreement between the Director, Bureau of Land Management and the Chief, Forest Service.

United States of America v. Raymond Bass, Betty Yeck et al., 6 IBLA 113 (June 5, 1972)

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Limited Accessibility for Public to Privately Copyrighted Data Machine Processed By Government, M-36848 (Jan. 12, 1972) 79 I.D.1

COURTS

Where only a portion of the lands in a unitized oil and gas lease is eliminated from the unit, the leased lands are situated in whole or in part on the known geologic structure of a producing oil or gas field, and the lease terms and factual circumstances are identical to those in the decision, Standard Oil Company of California et al., 76 I.D. 271 (1969), this Department will follow the ruling by the United States Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Morton, 450 F.2d 493 (1971), which overturned that decision solely upon principles of contract construction; therefore, the eliminated lands will retain the rental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to non-unitized lands within a known geologic structure.

Standard Oil Company of California and Atlantic Richfield Company, 5 IBLA 26 (Feb. 22, 1972) 79 I.D. 23

The filing of a court action to review a decision of this Department does not automatically suspend the effect of the decision. This Board, however, may order a suspension of the decision during the pendency of the court action if justice will thereby be served. If the action challenges the assessment of damages for a grazing trespass, unless the court orders otherwise, the grazing applicant's failure to pay the assessed damages will generally continue to serve as a bar to the issuance of any privileges to him until or unless the court finds the damages should not be assessed.

Eldon L. Smith, 5 IBLA 330 (Apr. 18, 1972) 79 I.D. 149

Where only a portion of the lands in a unitized oil and gas lease is eliminated from the unit, the leased lands are situated in whole or in part on a known geologic structure of a producing oil or gas field, and the lease terms and factual circumstances are identical to those in the decision, Standard Oil Company of California, et al., 76 I.D. 271 (1969), this Department will follow the ruling by the United States Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Morton, 450 F.2nd 493 (1971), which overturned that

COURTS--Continued

decision solely upon principles of contract construction; therefore, the eliminated lands will retain the rental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to non-unitized lands within a known geologic structure.

Standard Oil Company of California, 7 IBLA 345 (Sept. 27, 1972)

DESERT LAND ENTRY

GENERALLY

A junior applicant's petition for desert land entry is properly rejected when the senior application is allowed.

Howard R. and Lavaun B. Adams, Kathryn Clark, Respondent, 6 IBLA 246 (June 26, 1972)

An application for desert land entry which does not conform to mandatory regulatory requirements earns no priority as against a subsequent application, which subsequent application is perfected before the earlier application is remedied.

A desert land application for land unclassified therefor, which application is not accompanied by a petition for classification, gains no priority until that deficiency is cured.

Thomas D. Nighswonger, 6 IBLA 341 (July 13, 1972)

ANNUAL PROOF

When a first year desert land proof was rejected because of unacceptable expenditures and the entry is now in its third year, the entryman will be required to file second year proof; alternatively, he may file third year proof or apply for a patent.

Raymond E. Sitta, 7 IBLA 55 (Aug. 8, 1972)

APPLICANTS

The requirement of 43 U.S.C. § 325 (1970) that a desert land entryman "be a resident citizen of the State * * * in which the land * * * is located" applies only to the time when the original entry is made. It is not a continuing requirement, co-extensive with the life of the entry, but one which merely exists at the time the entry is made. However, the assignee of a desert land entry must show that he is a resident citizen of the state in which the land is situated as of the time of the assignment.

Calvin L. Howard, 6 IBLA 285 (June 30, 1972)

APPLICATIONS

A desert land application filed for lands which are withdrawn for stock-driveway purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of a withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert M. Ford, 4 IBLA 321 (Feb. 11, 1972)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of a withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Ralph J. Mellin, 6 IBLA 193 (June 19, 1972)

A junior applicant's petition for desert land entry is properly rejected when the senior application is allowed.

Howard R. and Lavaun B. Adams, Kathryn Clark, Respondent, 6 IBLA 246 (June 26, 1972)

An application for desert land entry which does not conform to mandatory regulatory requirements earns no priority as against a subsequent application, which subsequent application is perfected before the earlier application is remedied.

A desert land application for land unclassified therefor, which application is not accompanied by a petition for classification, gains no priority until that deficiency is cured.

Thomas D. Nighswonger, 6 IBLA 341 (July 13, 1972)

ASSIGNMENT

The requirement of 43 U.S.C. § 325 (1970) that a desert land entryman "be a resident citizen of the State * * * in which the land * * * is located" applies only to the time when the original entry is made. It is not a continuing requirement, co-extensive with the life of the entry, but one which merely exists at the time the entry is made. However, the assignee of a desert land entry must show that he is a resident citizen of the state in which the land is situated as of the time of the assignment.

Calvin L. Howard, 6 IBLA 285 (June 30, 1972)

CANCELLATION

When a first year desert land proof was rejected because of unacceptable expenditures and the entry is now in its third year, the entryman will be required to file second year proof; alternatively, he may file third year proof or apply for a patent.

Raymond E. Sitta, 7 IBLA 55 (Aug. 8, 1972)

FINAL PROOF

Under principles of equitable adjudication embodied in 43 CFR 1871.1-7 (1972), a desert land entrywoman who fails personally to make final proof of claim within the period provided may be permitted to present her proof and have her claim adjudicated on its merits, where the reason for her delay is compelling.

Warrine F. Harden, 5 IBLA 194 (Mar. 15, 1972)

DESERT LAND ENTRY--Continued

FINAL PROOF--Continued

A report of field examination is not evidence on which a desert land final proof may be rejected and the entry cancelled. Where final proof asserts full compliance with the law, and its showings are questioned, a contest complaint should be initiated to afford the entryman an opportunity for a hearing.

Calvin L. Howard, 6 IBLA 285 (June 30, 1972)

LANDS SUBJECT TO

A desert land application filed for lands which are withdrawn for stock-driveway purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of a withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert M. Ford, 4 IBLA 321 (Feb. 11, 1972)

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of a withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Ralph J. Mellin, 6 IBLA 193 (June 19, 1972)

RELIEF ACTS

Since the allowance of an application to purchase a desert land entry under the Act of February 14, 1934, is within the discretion of the Secretary, such an application is properly rejected where the entry lies in a block of public land having high recreational, scientific and natural values.

Heirs of Hermann H. and Hugo Goldschmidt, 5 IBLA 264 (Mar. 28, 1972)

ENLARGED HOMESTEADS

GENERALLY

A person who has patented an original homestead of less than one quarter section is entitled to obtain an enlarged homestead entry for additional lands not to exceed 320 acres when added to his original homestead.

August H. Snyder, 7 IBLA 347 (Sept. 28, 1972)

APPLICANTS

In applying departmental regulation 43 CFR 2511.1(b)(4), which disqualifies a person from acquiring a homestead entry when he owns more than 160 acres of land in the United States, to applications for additional entries under the Act of February 20, 1917, only lands acquired by the applicant under other than the homestead laws are to be considered in testing the qualifications of the applicant.

An applicant for an additional enlarged homestead pursuant to section 7 of the Enlarged Homestead Act need only show as to land ownership, that the tract

ENLARGED HOMESTEADS--Continued

APPLICANTS--Continued

applied for together with other land he has entered or acquired under the nonmineral public land laws will not exceed 480 acres.

August H. Snyder, 7 IBLA 347 (Sept. 28, 1972)

EQUITABLE ADJUDICATION

GENERALLY

Where applicants for Alaska Native allotments delivered their evidence of occupancy to the agency office of the Bureau of Indian Affairs which held them past the time when they were required to be filed with the Bureau of Land Management, absent any evidence that the delays were occasioned through the fault of the respective applicants, the rejection of those documents will be set aside, the documents received and the entries reinstated in accordance with the principles of equitable adjudication.

Where applicants for Alaska Native allotments delivered their evidence of occupancy to the agency office of the Bureau of Indian Affairs which held them past the time when they were required to be filed with the Bureau of Land Management, equitable relief is available under 43 CFR 1871.1-1 (1972), the error or informality having been satisfactorily explained as being the result of some obstacle over which the parties had no control.

Julius F. Pleasant, John Moore, Elia Wassillie, 5 IBLA 171 (Mar. 14, 1972)

Where a claimant under public land laws involving requirements of settlement or improvement of a claim alleges substantial compliance with the law within a statutory required period, but has failed to submit required proofs of compliance within that time, relief may be afforded under 43 U.S.C. §§ 1161-1164 (1970), and the implementing regulation, 43 CFR Part 1870 (1972), to permit equitable adjudication of late proofs on their merits.

Equitable adjudication may be invoked to permit consideration of a trade and manufacturing site purchase application which was not filed within the time required where substantial compliance with the law has been alleged and the reason given for the delay in filing the application is compelling.

Elizabeth Hickethier, 6 IBLA 306 (July 11, 1972)

Where a claimant under public land laws involving requirements of settlement or improvement of the claim alleges substantial compliance with the law within a statutorily required period, but has failed to submit required proofs of compliance within that time, relief may be afforded under 43 U.S.C. §§ 1161-1164 (1970), and the implementing regulation, 43 CFR Part 1870 (1972), to permit equitable adjudication of late proofs on their merits.

Equitable adjudication may be invoked to permit consideration of a homesite purchase application which was not filed

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

within the time required, where substantial compliance with the law has been alleged, and the claim was initiated before the land was withdrawn by Public Land Order No. 4582.

Herbert W. Simms, 7 IBLA 51 (Aug. 4, 1972)

Equitable adjudication may be invoked to permit consideration and reinstatement of a headquarters site purchase application where a survey deposit was not paid within the time required, but substantial compliance of the law otherwise has been alleged, and the claim was initiated before the land was withdrawn by Public Land Order No. 4582.

Beverly J. Hayes, 8 IBLA 287 (Dec. 6, 1972)

The right of a homesteader to equitable adjudication is determined as of the date on which he has substantially complied with the homestead law, and this right is not affected by a subsequent withdrawal under the Alaska Native Claims Settlement Act, 43 U.S.C.A. § 1610 (1972).

Francis I. Hunt, 8 IBLA 390 (Dec. 19, 1972)

SUBSTANTIAL COMPLIANCE

Under the general principles of equitable adjudication an applicant for purchase of a trade and manufacturing site claim who filed his application 2 days after the expiration of the 5 year statutory period allowed for such filing may have his claim adjudicated on its merits. 43 U.S.C. § 687a-1 (1970).

C. Rick Houston, 5 IBLA 71 (Mar. 1, 1972)

Under principles of equitable adjudication embodied in 43 CFR 1871.1-7 (1972), a desert land entrywoman who fails personally to make final proof of claim within the period provided may be permitted to present her proof and have her claim adjudicated on its merits, where the reason for her delay is compelling.

Warrine F. Harden, 5 IBLA 194 (Mar. 15, 1972)

Equitable adjudication is not available to a homestead entrywoman in the absence of substantial compliance with the requirements of the homestead law.

Lois A. Mayer, 7 IBLA 127 (Aug. 24, 1972)

Equitable adjudication may be invoked to permit consideration of a homesite purchase application which was not filed within the time required where substantial compliance with the law is asserted and the delay is satisfactorily explained.

Richard Lee Farrens, 7 IBLA 133 (Aug. 25, 1972)

Equitable adjudication may be invoked to permit consideration of an application to purchase a trade and manufacturing

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

ENTITLEMENT OF MINERS--Continued

Discharge--Continued

Elements of Proof--Continued

representative before a violation of section 110(b)(1)(A) can take place.

Glenn Munsey, Earnest Scott, and Arnold Scott v. Smitty Baker Coal Company, Inc., 1 IBMA 208 (Oct. 20, 1972) 79 I.D. 676

A report of an alleged danger at a coal mine instigated by a miner to a union safety coordinator, standing alone, is not sufficient to establish a violation of section 110(b)(1)(A) of the Act.

John Wilson & Ronald Rummel v. Laurel Shaft Construction Company, Inc., 1 IBMA 217 (Dec. 19, 1972) 79 I.D. 701

Notices of violation of section 304(d) of the Act based entirely on a visual observation by the inspector are unsupported by probative evidence and must be vacated.

Notices of violation of section 304(c) of the Act based entirely on the visual observation of the inspector are unsupported by probative evidence and must be vacated.

Eastern Associated Coal Corporation, 1 IBMA 233 (Dec. 27, 1972) 79 I.D. 723

Inferences

A finding pertaining to an operator's knowledge or belief that a miner has engaged in activities protected by subsection 110(b)(1) of the Act may be based on inferences, but such inferences must be properly drawn from established facts of record and in accordance with the fundamental principles of the law of Evidence relating to inferences.

Glenn Munsey, Earnest Scott, and Arnold Scott v. Smitty Baker Coal Company, Inc., 1 IBMA 144 (Aug. 8, 1972) 79 I.D. 501

Jurisdiction

Subsection 110(b) of the Act limits the jurisdiction of the Secretary to the protection only of those activities specified in that subsection and does not provide relief for general labor grievances.

Glenn Munsey, Earnest Scott, and Arnold Scott v. Smitty Baker Coal Company, Inc., 1 IBMA 144 (Aug. 8, 1972) 79 I.D. 501

An independent contractor engaged in the construction of a mine ventilation shaft which is to be used in connection with the extraction of bituminous coal is both an "operator" and a "person" subject to section 110(b)(1)(A) of the Act.

John Wilson & Ronald Rummel v. Laurel Shaft Construction Company, Inc., 1 IBMA 217 (Dec. 19, 1972) 79 I.D. 701

Protected Activities

The Congress limited protection in sec. 110(b) of the Act to three specific activities, and the Secretary and his delegates must limit administration of the Act to what the Congress has explicitly authorized.

Glenn Munsey, Earnest Scott, and Arnold Scott v. Smitty Baker Coal Company, Inc., 1 IBMA 208 (Oct. 20, 1972) 79 I.D. 676

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

HEARINGS

Generally

It is an abuse of discretion for an Administrative Law Judge to deny a motion to transfer the site of a hearing to any other sites listed in 43 CFR 4.542(a) where it is shown that the site requested is more convenient to the parties.

Wayne Branham t/a Mark Alan Coal Co., 1 IBMA 212 (Oct. 30, 1972) 79 I.D. 680

Admissibility of Evidence

The payment of a proposed order of assessment is not an offer of compromise, and when such payment is made, it does not render notices of violation and notices of termination or abatement inadmissible as evidence of the operator's history of violations.

The Valley Camp Coal Company, 1 IBMA 196 (Sept. 29, 1972) 79 I.D. 625

Burden of Proof

The burden of proof in a proceeding for the review of an imminent danger of withdrawal is on the applicant.

Lucas Coal Company, 1 IBMA 138 (June 29, 1972) 79 I.D. 425

Decisions

Section 8(b) of the Administrative Procedure Act requires findings of fact. In the absence of findings it may be impossible for the Board of Mine Operations Appeals to review a decision of an examiner, and the case should be remanded to the examiner.

Lucas Coal Company, 1 IBMA 138 (June 29, 1972) 79 I.D. 425

INJUNCTIONS

Where 30 CFR 75.1403-7(d) was subject to the injunction in Ratliff v. Hickel, Civil Action No. 70-C-50-A (W.D., Va., April 23, 1970), the inspector should have notified the operator to properly connect chains between mantrip cars, but he should not have issued a notice of violation of section 314(b) to circumvent the injunction.

Mid-Continent Coal and Coke Co, 1 IBMA 250 (Dec. 29, 1972) 79 I.D. 736

INSPECTIONS AND INVESTIGATIONS

Evidence obtained as a result of an inspection conducted under the authority of sec. 103 of the Federal Coal Mine Health and Safety Act of 1969, without the consent of the operator and without a search warrant, is admissible in an administrative proceeding.

Clinchfield Coal Company, 1 IBMA 70a (Nov. 10, 1971) 79 I.D. 655

FEDERAL COAL MINE HEALTH AND SEFETY ACT OF 1969--Continued

MANDATORY SAFETY STANDARDS

Generally

A visual observation standing alone, will not suffice to meet the Bureau's burden of proof of a 304(d) notice of violation.

An operator will not be allowed to use his negligence in not complying with one standard as an excuse for failure to comply with another.

Newsome Brothers, Inc., 1 IBMA 190 (Sept. 29, 1972)

Where 30 CFR 75.1403-7(d) was subject to the injunction in Ratliff v. Hickel, Civil Action No. 70-C-50-A (W.D., Va., April 23, 1970), the inspector should have notified the operator to properly connect chains between mantrip cars, but he should not have issued a notice of violation of section 314(b) to circumvent the injunction.

Where an operator is charged with a duty of inspection of a high-voltage cable in an entry, the entry constitutes an active working, and it is subject to the requirements of 30 CFR 75.400.

Where an operator failed to reinsulate wires, which were originally encased by individual insulation and by an outer cable jacket, with two layers of friction tape, a violation of 30 CFR 75.514 occurred.

Mid-Continent Coal and Coke Co, 1 IBMA 250 (Dec. 29, 1972) 79 I.D. 736

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS

An operator's petition for the modification of the application of a mandatory safety standard will be denied where such petition is based solely upon the argument that the operator's mine is not gassy.

Reliable Coal Corporation, 1 IBMA 97 (Mar. 31, 1972) 79 I.D. 139

Interim Relief

The discretion of an examiner or the Board to grant interim relief, pending adjudication of a section 301(c) petition for modification, may be exercised only after a hearing has been afforded the parties, and it clearly appears: (1) that the petition has been filed in good faith; (2) that during the interim, the health and safety of the miners will be reasonably assured; and (3) that the operator will suffer irreparable harm if the interim relief is not granted.

Gateway Coal Company, 1 IBMA 82 (Mar. 16, 1972) 79 I.D. 102

NOTICES OF VIOLATION

Generally

A visual observation standing alone, will not suffice to meet the Bureau's burden of proof of a 304(d) notice of violation.

Newsome Brothers, Inc., 1 IBMA 190 (Sept. 29, 1972)

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

NOTICES OF VIOLATION--Continued

Generally--Continued

An operator is entitled to adequate and timely notice of the section of the Act or mandatory standard alleged to be violated in order to prepare a defense in a proceeding for assessment of civil penalty.

Section 304(a) and 304(d) of the Act were each designed for a distinct purpose and may be cited as independent violations.

Eastern Associated Coal Corporation, 1 IBMA 233 (Dec. 27, 1972) 79 I.D. 723

Elements of Proof

Notices of violation of section 304(d) of the Act based entirely on a visual observation by the inspector are unsupported by probative evidence and must be vacated.

Notices of violation of section 304(c) of the Act based entirely on the visual observation of the inspector are unsupported by probative evidence and must be vacated.

Eastern Associated Coal Corporation, 1 IBMA 233 (Dec. 27, 1972) 79 I.D. 723

In proving a violation of section 304(c) (based on the absence of rock dust) the Bureau must first prove by a preponderance of the evidence that rock dust was required, i.e., that none of the exceptions in section 304(c) apply. When the exception involves specifically delineated percentages of incombustible dust content, proof that it does not apply should be based upon samples and tests of the incombustible content of the dust.

The Valley Camp Coal Company, 1 IBMA 243 (Dec. 29, 1972) 79 I.D. 730

Reasonableness of Time

The filing of a petition for modification by an operator should be a major consideration in determining the reasonableness of the time fixed for abatement of any alleged violation which relates to the safety standard sought to be modified.

Reliable Coal Corporation, 1 IBMA 97 (Mar. 31, 1972) 79 I.D. 139

PENALTIES

Ratliff v. Hickel, Civil Action Number 70-C-50-A (W.D.VA., Filed April 23, and 30, 1970), is not a bar to assessment of penalties in this proceeding.

Robert G. Lawson Coal Co., 1 IBMA 115 (May 11, 1972) 79 I.D. 657

The assessment of civil penalties under sec. 109 of the Act must be judged on the particular set of facts in each instance, and mitigation in one case may not warrant mitigation in another.

Final authority to assess civil penalties is in the Board as the delegate of the Secretary of the Interior.

Pecco Coal Co., 1 IBMA 123 (May 18, 1972) 79 I.D. 664

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Generally

The payment of a proposed order of assessment is not an offer of compromise, and when such payment is made, it does not render notices of violation and notices of termination or abatement inadmissible as evidence of the operator's history of violations.

The Valley Camp Coal Company, 1 IBMA 196
(Sept. 29, 1972) 79 I.D. 625

An operator may be liable for a civil penalty for the violation of a mandatory safety standard even though there is no showing of negligence on his part. Negligence is a factor to be considered in determining the amount of the penalty.

Evidence of previous violations is admissible regardless of whether proposed assessments were paid because even though paid they are not offers of compromise. The Act requires that the operator's history of previous violations be considered in determining the amount of a penalty.

In proving a violation of section 304(c) (based on the absence of rock dust) the Bureau must first prove by a preponderance of the evidence that rock dust was required, i.e., that none of the exceptions in section 304(c) apply. When the exception involves specifically delineated percentages of incombustible dust content, proof that it does not apply should be based upon samples and tests of the incombustible content of the dust.

The Valley Camp Coal Company, 1 IBMA 243
(Dec. 29, 1972) 79 I.D. 730

Amounts

The purpose of section 109(a)(1) criteria for assessing penalties is to insure that while the amount imposed will not unduly hamper the ability of the operator to stay in business, it will serve to deter future violations of the mandatory standards.

Newsome Brothers, Inc., 1 IBMA 190 (Sept. 29, 1972)

In determining the amount of a penalty, the absence of miners in the mine can be considered in weighing the seriousness of the violation.

The Valley Camp Coal Company, 1 IBMA 243
(Dec. 29, 1972) 79 I.D. 730

Criteria

In applying the criteria of sec. 109, it is error when considering the operator's history of past violations for an examiner to take into account the operator's failure to abate a violation within the time set in the Notice of Violation.

In applying the criteria of sec. 109 of the Act, it is error for an examiner to conclude that the operator demonstrated a lack of good faith as to each violation solely on the basis that the violation was not abated within the time set in the original Notice of Violation.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Criteria--Continued

While the failure of an operator to abate upon proper notice may reflect upon his good faith in complying with the mandatory standards, such failure is not an element to be considered in determining an operator's negligence in permitting violations to occur.

Each violation of sec. 109 of the Act should be analyzed in terms of the potential hazard to the safety of the miners and the probability of such hazard occurring.

Robert G. Lawson Coal Co., 1 IBMA 115
(May 11, 1972) 79 I.D. 657

Evidence

A notice charging violation of sec. 305(g) of the Act must be supported by facts from which a conclusion can be drawn as to the "frequency" of inspections made by the operator.

Robert G. Lawson Coal Co., 1 IBMA 115
(May 11, 1972) 79 I.D. 657

Where Congress has specified the percentages of incombustible material allowable in sec. 304(d) of the Act, it is necessary for the Bureau of Mines to present probative evidence--more than a mere visual observation of the inspector.

In the absence of evidence, such as business and tax records, showing that a penalty under section 109 of the Act will affect the ability of the operator to stay in business, a presumption exists that the operator will not be so affected.

Hall Coal Co., 1 IBMA 175 (Aug 22, 1972)
79 I.D. 668

Existence of Violation

The criteria prescribed in section 109(a) of the Act and 30 CFR 4.546(a) are not considered in finding a violation of the Act.

The Valley Camp Coal Company, 1 IBMA 196
(Sept. 29, 1972) 79 I.D. 625

An order of withdrawal for imminent danger may be validly issued for conditions and practices not constituting violations, and it may also be true that violations specified in such an order may be valid and subject to penalty assessments but may not constitute imminent danger.

The mere presence of an excessive accumulation of methane does not constitute a violation of section 303(h)(2) of the Act.

Eastern Associated Coal Corporation, 1 IBMA 233
(Dec. 27, 1972) 79 I.D. 723

Neither the Act nor the Regulations provides that a mere presence of methane gas in excess of 1.0 volume per centum is per se a violation.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Existence of Violation--Continued

Failure by an operator upon becoming aware of the presence of 1.0 volume per centum or more of methane at a working place to do any of the following would violate section 303(h)(2): first, to make immediate changes or adjustments in the ventilation of the mine; second, to cut off power to electric face equipment located in the affected area while adjustments are being made in the ventilation; third, to stop all work immediately in the affected area; fourth, to take precautions so as to prevent other areas of the mine from becoming endangered; fifth, to withdraw all persons except those referred to in section 104(d) of the Act at any time that a working place contains 1.5 volume per centum or more of methane.

Mid-Continent Coal and Coke Co, 1 IBMA 250 (Dec. 29, 1972) 79 I.D. 736

Mitigation

Mitigation of a penalty under section 109 of the Act is not a condonation of a violation.

Pecco Coal Co., 1 IBMA 123 (May 18, 1972) 79 I.D. 664

The Board, as in this case, may mitigate penalties imposed by an examiner that are disproportionate to the violations involved in light of the six criteria established in section 109(a)(1) of the Act, particularly considering that the infraction was a first offense, committed shortly after the effective date of the Act, by a small operator, who demonstrated good faith by immediate abatement.

Hall Coal Co., 1 IBMA 175 (Aug 22, 1972) 79 I.D. 668

Negligence

An operator can be liable for a civil penalty under section 109 of the Act even though there is no showing of negligence on his part. Negligence is considered solely in determining the amount of the penalty.

The Valley Camp Coal Company, 1 IBMA 196 (Sept. 29, 1972) 79 I.D. 625

Reasonableness

Where, numerous violations are found and cited, the aggregate amount of the proposed assessment may be unreasonable for no other reason than that the amount is beyond the operator's ability to pay.

Robert G. Lawson Coal Co., 1 IBMA 115 (May 11, 1972) 79 I.D. 657

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Standards

The criteria prescribed in sec. 109(a) of the Act and 30 CFR 4.546(a) are not considered in finding a violation of the Act.

The Valley Camp Coal Company, 1 IBMA 196 (Sept. 29, 1972) 79 I.D. 625

Vacation

Where the Secretary has not promulgated regulations concerning approved recording books required in sec. 303(g) of the Act, and the operator's statement is unrefuted that he had made the air readings required therein, a Notice of Violation of that section will be vacated.

Robert G. Lawson Coal Co., 1 IBMA 115 (May 11, 1972) 79 I.D.657

REVIEW OF NOTICES AND ORDERS

Generally

Evidence obtained as a result of an inspection conducted under the authority of sec. 103 of the Federal Coal Mine Health and Safety Act of 1969, without the consent of the operator and without a search warrant, is admissible in an administrative proceeding.

Clinchfield Coal Company, 1 IBMA 70a (No . 10, 1971) 79 I.D. 655

Timeliness of Filing

The 30-day time limit prescribed by section 105(a) of the Act for filing applications for review is a limitation on the Secretary's jurisdiction. An application received more than thirty days after receipt of an order sought to be reviewed is not timely filed within the meaning of the Act and the Regulations.

Consolidation Coal Company, Inc., 1 IBMA 131 (June 13, 1972) 79 I.D. 413

The right to have an action reviewed arises at the time of the cause of action, and if an operator's cause of action relates to an order of withdrawal, his time for filing for review of that order begins to run upon receipt of that order.

Old Ben Coal Corporation, 1 IBMA 182 (Aug. 30, 1972) 79 I.D. 674

FEDERAL EMPLOYEES AND OFFICERS

GENERALLY

Where the appropriate state agency approves abandonment of a well as of a date certain, marking the cessation of production, and a federal employee later notifies a person interested in the oil and gas lease that he has 60 days from a later date, erroneously construed by such employee to be the date of such cessation, within which to commence drilling or reworking operations, such notification will not be construed as creating any rights.

R. E. Hibbert, 8 IBLA 379 (Dec. 12, 1972)

AUTHORITY TO BIND GOVERNMENT

Reliance upon information or opinion of any officer, agent or employee or records maintained by land offices cannot bind or estop the United States or operate to vest any right not authorized by law.

Mark Systems, Inc., 5 IBLA 257 (Mar. 23, 1972)

Erroneous advice given by employees of the Bureau of Land Management through incorrect notations on the historical index or by a public notice as to availability of land cannot confer a right not authorized by law.

Hiko Bell Mining & Oil Company, 6 IBLA 8 (May 9, 1972)

The action or inaction of Department employees cannot under the doctrines of estoppel or laches bar the Secretary of the Interior and his delegates from discharging their duty to determine if public lands have been omitted from an original survey and to survey those lands found to have been omitted.

Utah Power and Light Company, 6 IBLA 79 (May 22, 1972) 79 I.D. 397

A failure of Government officials to provide information that land was closed to mining locations cannot give life to invalid mining claims.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

Where federal governmental employees advised an applicant to apply for land under the Recreation and Public Purposes Act, the Department of the Interior is not bound to grant the application where it is decided that it is improper to do so, as erroneous advice cannot confer any rights not authorized by law.

Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (Nov. 22, 1972)

Rights not authorized by law cannot be acquired through reliance on erroneous

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

information given by employees of the Bureau of Land Management.

William Henry Weaver, 8 IBLA 313 (Dec. 7, 1972)

Erroneous information given by employees of the Bureau of Land Management cannot give a party rights in law that he would not otherwise have.

Rudolph Chase and Raymond W. Voss, 8 IBLA 351 (Dec. 11, 1972)

Where the appropriate state agency approves abandonment of a well as of a date certain, marking the cessation of production, and a federal employee later notifies a person interested in the oil and gas lease that he has 60 days from a later date, erroneously construed by such employee to be the date of such cessation, within which to commence drilling or reworking operations, such notification will not be construed as creating any rights.

R. E. Hibbert, 8 IBLA 379 (Dec. 12, 1972)

AWARDS

Employee-inventor's acceptance of government cash award given in consideration of his making invention would secure for the Government a right to use invention free from any further claim that might be based thereon; 5 U.S.C. sec. 2123(d) (1964).

Rights to Invention Made by Employee, M-36814 (Jan. 13, 1972) 79 I.D. 3

INTEREST IN LANDS

A simultaneously filed oil and gas lease offer which gain priority at a public drawing is properly rejected in its entirety when it is discovered that the offer was jointly made by two persons, one of whom is an employee of the Department of the Interior who is prohibited from voluntarily acquiring any interest in the lands or resources administered by the Bureau of Land Management, and although the other joint offeror is apparently a qualified individual, that fact cannot operate either to validate the offer as presented or to require that it be divided so as to separate the interest of the qualified individual from that of the unqualified individual.

Carmen M. Luna, 6 IBLA 176 (June 15, 1972)

GEOLOGICAL SURVEY

A prospecting application, filed under the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), may be granted only where the lands are not known to contain valuable deposits of mineral. The determination whether a specific tract of land is subject to the issuance of a prospecting permit or of a mineral lease is committed to the Secretary. In making such a determination, the Secretary is entitled to rely upon advice furnished by his technical representative, the Director of the Geological Survey.

The rejection of an application for a prospecting permit for lands within the exterior boundaries of a national forest in Minnesota, filed pursuant to the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), is properly reversed where the Geological Survey, upon reconsideration, determines that prospecting is needed to ascertain whether the land contains workable deposits of the minerals sought.

Lloyd K. Johnson, 8 IBLA 73 (Oct. 27, 1972)

A determination by the Geological Survey that lands contain deposits of oil shale, and are therefore withdrawn by Executive Order 5327 of April 15, 1930, will not be disturbed in the absence of a clear showing that the determination was improperly made.

John R. Shelburne, 8 IBLA 115 (Nov. 14, 1972)

A determination by the Geological Survey that lands contain deposits of oil shale, and are therefore withdrawn by Executive Order 5327 of April 15, 1930, will not be disturbed in the absence of a clear showing that the determination was improperly made.

Heath B. Fowler, 8 IBLA 376, (Dec. 12, 1972)

GRAZING AND GRAZING LANDS

Range improvement permits, issued pursuant to sec. 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315(m) (1970), may be canceled where the improvement would interfere with the range management practices determined by the Bureau of Land Management; where a management plan of the Bureau, developed for a project authorized under the Federal Water Project Recreation Act of July 9, 1965, 16 U.S.C. § 460 l-12, et seq. (1970), designates an area of public lands as a "roadless zone" for purposes of wildlife and recreational uses, it is proper for the Bureau to cancel an existing range improvement permit and deny an application for a similar permit which calls for the construction of roads in such zoned areas.

Mary A. Van Alen, 8 IBLA 77 (Oct. 27, 1972)

GRAZING LEASES

GENERALLY

In keeping with the purposes of the Taylor Grazing Act, as shown in its title, the award of lands to an applicant for a grazing lease under section 15 of the Act and the rejection of a conflicting application for a renewal grazing lease for the same lands will be reversed where the record shows that both applicants have equal preference rights to lease, similar needs for the land, and proper management of the leased range land will be obtained from either applicant.

Victor Powers and Florence Sellers, 5 IBLA 197 (Mar. 20, 1972)

A person who owns lands contiguous to public lands, but who has leased all of his "range land" in the county in question, excluding "the approximately 51 acres comprising the home place" to another, under which agreement such other pays to his lessor $9,000 per annum; runs a grazing operation on such lands; utilizes his lessor's livestock; acquires title to the natural increase of such livestock, is entitled to proceeds from the sale of replaced livestock and of calves, except for the proceeds of bulls, and pursuant to the agreement the lessor divests himself of the right of entry and possession of the leased land, is not a qualified preference-right claimant since he is not a "lawful occupant of contiguous private land" within the ambit of 43 U.S.C. § 315(m) (1970) and 43 CFR 4121.2-1(c)(1) (1972).

Laurence A. Andren, Appellant, William J. Greenwald, Appellee, 7 IBLA 14 (July 24, 1972)

A grazing lease will not bar disposal of the leased lands under the public land laws, and the issuance of a patent deprives the Department of all jurisdiction over the land so that where the leased land has been patented pursuant to the exchange provision of the Taylor Grazing Act cancellation of the lease will be sustained despite the fact that the grazing lessee was not given direct notice of the impending exchange, but the grazing lessee will be reimbursed for the unearned balance of the rental paid to the Bureau of Land Management.

Andrew J. Myers, 7 IBLA 314 (Sept. 22, 1972)

A Bureau of Land Management appraisal of the amount of compensation to be paid to the owner of an authorized fence, who was a former grazing lessee on lands approved for sale to a state agency, will be modified to increase the amount where the appraisal is made on a per-rod basis and the fence

GRAZING LEASES--Continued

GENERALLY--Continued

owner contends on appeal, which contention is uncontroverted by the state, that he measured the fence at a greater length than the length on which the appraisal was based, because much of the fence is constructed over rough terrain which measures out to a greater distance than the surveyed distance.

Carl A. Klug, Nebraska Game and Parks Commission, 8 IBLA 35 (Oct. 11, 1972)

Range improvement permits, issued pursuant to sec. 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315(m) (1970), may be canceled where the improvement would interfere with the range management practices determined by the Bureau of Land Management; where a management plan of the Bureau, developed for a project authorized under the Federal Water Project Recreation Act of July 9, 1965, 16 U.S.C. § 460 l-12, et seq. (1970), designates an area of public lands as a "roadless zone" for purposes of wildlife and recreational uses, it is proper for the Bureau to cancel an existing range improvement permit and deny an application for a similar permit which calls for the construction of roads in such zoned areas.

Mary A. Van Alen, 8 IBLA 77 (Oct. 27, 1972)

APPLICATIONS

A person who owns lands contiguous to public lands, but who has leased all of his "range land" in the county in question, excluding "the approximately 51 acres comprising the home place" to another, under which agreement such other pays to his lessor $9,000 per annum; runs a grazing operation on such lands; utilizes his lessor's livestock; acquires title to the natural increase of such livestock, is entitled to proceeds from the sale of replaced livestock and of calves, except for the proceeds of bulls, and pursuant to the agreement the lessor divests himself of the right of entry and possession of the leased land, is not a qualified preference-right claimant since he is not a "lawful occupant of contiguous private land" within the ambit of 43 U.S.C. § 315(m) (1970) and 43 CFR 4121.2-1(c)(1) (1972).

Laurence A. Andren, Appellant, William J. Greenwald, Appellee, 7 IBLA 14 (July 24, 1972)

If a new applicant for a grazing lease files his application for lands in an existing lease within the regulatory-required period of not less than 30 days nor more than 90 days prior to the expiration of the current lease, his application is not subject to rejection as being made for land not available for lease.

Douglas V. Livingston, et al., 8 IBLA 61 (Oct. 26, 1972)

GRAZING LEASES--Continued

APPLICATIONS--Continued

Where an award of public land embraced in two conflicting preference right applications is based upon the factors enunciated in 43 CFR 4121.2-1, it will not be disturbed absent a showing that the award is inequitable.

Dick Reckmann, et al., 8 IBLA 227 (Nov. 28, 1972)

APPORTIONMENT OF LAND

In keeping with the purposes of the Taylor Grazing Act, as shown in its title, the award of lands to an applicant for a grazing lease under section 15 of the Act and the rejection of a conflicting application for a renewal grazing lease for the same lands will be reversed where the record shows that both applicants have equal preference rights to lease, similar needs for the land, and proper management of the leased range land will be obtained from either applicant.

Victor Powers and Florence Sellers, 5 IBLA 197 (Mar. 20, 1972)

A person who owns lands contiguous to public lands, but who has leased all of his "range land" in the county in question, excluding "the approximately 51 acres comprising the home place" to another, under which agreement such other pays to his lessor $9,000 per annum; runs a grazing operation on such lands; utilizes his lessor's livestock; acquires title to the natural increase of such livestock, is entitled to proceeds from the sale of replaced livestock and of calves, except for the proceeds of bulls, and pursuant to the agreement the lessor divests himself of the right of entry and possession of the leased land, is not a qualified preference-right claimant since he is not a "lawful occupant of contiguous private land" within the ambit of 43 U.S.C. § 315(m) (1970) and 43 CFR 4121.2-1(c)(1) (1972).

Laurence A. Andren, Appellant, William J. Greenwald, Appellee, 7 IBLA 14 (July 24, 1972)

A division of federal range between two conflicting equal preference right applicants for a lease will not be disturbed in the absence of persuasive reason showing the division was inequitable, and the record supports an award of a parcel of land to a new grazing lessee applicant rather than an applicant for renewal of an existing lease due to factors of topography, proper range management, and history of nonuse of the parcel.

Douglas V. Livingston, et al., 8 IBLA 61 (Oct. 26, 1972)

GRAZING LEASES--Continued

APPORTIONMENT OF LAND--Continued

Where an award of public land embraced in two conflicting preference-right applications is based upon the factors enunciated in 43 CFR 4121.2-1, it will not be disturbed absent a showing that the award is inequitable.

Dick Reckmann, et al., 8 IBLA 227 (Nov. 28, 1972)

CANCELLATION

A grazing lease will not bar disposal of the leased lands under the public land laws, and the issuance of a patent deprives the Department of all jurisdiction over the land so that where the leased land has been patented pursuant to the exchange provision of the Taylor Grazing Act cancellation of the lease will be sustained despite the fact that the grazing lessee was not given direct notice of the impending exchange, but the grazing lessee will be reimbursed for the unearned balance of the rental paid to the Bureau of Land Management.

Andrew J. Myers, 7 IBLA 314 (Sept. 22, 1972)

PREFERENCE RIGHT APPLICANTS

In keeping with the purposes of the Taylor Grazing Act, as shown in its title, the award of lands to an applicant for a grazing lease under section 15 of the Act and the rejection of a conflicting application for a renewal grazing lease for the same lands will be reversed where the record shows that both applicants have equal preference rights to lease, similar needs for the land, and proper management of the leased range land will be obtained from either applicant.

Victor Powers and Florence Sellers, 5 IBLA 197 (Mar. 20, 1972)

A person who owns lands contiguous to public lands, but who has leased all of his "range land" in the county in question, excluding "the approximately 51 acres comprising the home place" to another, under which agreement such other pays to his lessor $9,000 per annum; runs a grazing operation on such lands; utilizes his lessor's livestock; acquires title to the natural increase of such livestock, is entitled to proceeds from the sale of replaced livestock and of calves, except for the proceeds of bulls, and pursuant to the agreement the lessor divests himself of the right of entry and possession of the leased land, is not a qualified preference-right claimant since he is not a "lawful occupant of contiguous private land" within the ambit of 43 U.S.C. § 315(m) (1970) and 43 CFR 4121.2-1(c)(1) (1972).

Where grazing privileges for certain public lands have been awarded to an asserted preference-right claimant, and it is found that he was not entitled to such a preference since control of the base lands had been vested by him in another under a contract which has expired, the case will be

GRAZING LEASES--Continued

PREFERENCE RIGHT APPLICANTS--Continued

remanded for adjudication in the light of the existing circumstances.

Laurence A. Andren, Appellant, William J. Greenwald, Appellee, 7 IBLA 14 (July 24, 1972)

A division of federal range between two conflicting equal preference-right applicants for a lease will not be disturbed in the absence of persuasive reason showing the division was inequitable, and the record supports an award of a parcel of land to a new grazing lessee applicant rather than an applicant for renewal of an existing lease due to factors of topography, proper range management, and history of nonuse of the parcel.

Douglas V. Livingston, et al., 8 IBLA 61 (Oct. 26, 1972)

Where an award of public land embraced in two conflicting preference-right applications is based upon the factors enunciated in 43 CFR 4121.2-1, it will not be disturbed absent a showing that the award is inequitable.

Dick Reckmann, et al., 8 IBLA 227 (Nov. 28, 1972)

RENEWAL

A division of federal range between two conflicting equal preference right applicants for a lease will not be disturbed in the absence of persuasive reason showing the division was inequitable, and the record supports an award of a parcel of land to a new grazing lessee applicant rather than an applicant for renewal of an existing lease due to factors of topography, proper range management, and history of nonuse of the parcel.

Douglas V. Livingston, et al., 8 IBLA 61 (Oct. 26, 1972)

GRAZING PERMITS AND LICENSES

GENERALLY

Where a grazing applicant has executed a valid range-line agreement approved by this Department such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

Evart Jensen, 5 IBLA 96 (Mar. 6, 1972)

When consideration of a denial to grant grazing privileges has become moot because of the expiration of the grazing season, the issue need not be resolved on appeal unless it will bear upon future awards, since grazing privileges for past seasons cannot be granted or past awards changed.

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

Where an applicant for grazing privileges has failed to pay assessed damages for a grazing trespass which assessment has been affirmed by the Secretary of the Interior, a district manager properly conditioned approval of the applicant's application upon payment of his outstanding trespass damages. No license or permit will be issued or renewed until payment of any amount found to be due has been offered.

Eldon L. Smith, 5 IBLA 330 (Apr. 18, 1972)
79 I.D. 149

No readjudication of the boundaries of an allotment of the federal range will be made on the claim of a grazing licensee or permittee who has accepted such boundaries as set forth in an agreement executed by his predecessors in interest, and for a period of three successive years immediately preceding his claim has been issued licenses for grazing privileges restricted to the area delineated by the agreement.

An application for increased grazing privileges is properly rejected where the applicant has failed to show that he controls sufficient base water to justify the award of such privileges and his allotment is lacking in fences to prevent the drift of cattle into other portions of the federal range located in an adjoining state.

Eldon L. Smith, 6 IBLA 166 (June 14, 1972)

When consideration of a denial to grant grazing privileges has become moot because of the expiration of the grazing season, the issue need not be resolved on appeal unless it will bear upon future awards since grazing privileges for past seasons cannot be granted or past awards changed.

Eldon L. Smith, 6 IBLA 310 (July 12, 1972)

The Bureau of Land Management has the right and the duty to rate the grazing capacity of the federal range and to issue grazing licenses or permits regardless of any written agreements between it and a cooperative state grazing district.

United States v. John K. Johnson, 8 IBLA 68 (Oct. 26, 1972)

Where an applicant for grazing privileges has failed to pay damages assessed by the Secretary of the Interior for a grazing trespass, a district manager properly conditioned approval of the applicant's application upon payment of his outstanding trespass damages.

Where an applicant has been denied grazing privileges because he has failed to pay trespass damages assessed by the Secretary of the Interior but, despite repeated warnings by Bureau of Land Management personnel, he willfully and repeatedly grazed his livestock in trespass, an Administrative Law Judge, following a hearing on a show cause notice, properly

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

assessed trespass damages and suspended the applicant's grazing privileges until three years after payment of the damages.

Eldon L. Smith, 8 IBLA 86 (Nov. 3, 1972)

A decision of a District Manager locating a boundary of an allotment will be reversed where a permittee sustains his burden of proving that that boundary was in another location.

E. S. Kennon, 8 IBLA 118 (Nov. 14, 1972)

The Bureau of Land Management has the right and the duty to determine the grazing capacity of the federal range and to issue grazing licenses or permits regardless of any written agreements between the Bureau of Land Management and a cooperative state grazing district.

Lloyd Pewonka, James Caves and H. R. Sudbrack, Roy Kindle and Sons, 8 IBLA 303 (Dec. 7, 1972)

Where pursuant to cooperative agreements for the construction of a fence on public land between appellant's and another's allotments and where all the parties have complied with the terms of the cooperative agreements, a request for partial reimbursement of costs on an equal basis may not be considered, because such issues were resolved in an earlier contract and it is essentially a dispute, if any, between private parties; and neither an Administrative Law Judge nor the Board of Land Appeals has authority to direct payment of compensation.

Under the provisions of 43 CFR 4115.2-1(e)(9) a grazing licensee or permittee is precluded from seeking to increase his base property qualifications, where, for two or more consecutive years subsequent to the adjudication of his grazing privileges, he has filed applications for only those qualifications determined by the adjudicatory decision.

Under the provisions of 43 CFR 4115.2-1(e)(13)(i) a grazing licensee or permittee is precluded from questioning base property qualifications which have been recognized and licenses have issued for more than three consecutive years.

Phil Hillberry, 8 IBLA 428 (Dec. 21, 1972)

ADJUDICATION

A decision of a district manager which is arbitrary or capricious will not be sustained, when challenged by one who has standing, even in the absence of any evidence of serious economic impact. To that extent, National Livestock Company and Zack Cox, I.G.D. 55 (1938), is overruled.

A decision involving the exercise of administrative discretion, which is supportable on any rational basis, is not arbitrary or capricious. An apportionment of the federal range, involving some abolition of "split-use" between states and based upon the effectuation of a management plan reasonably related

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

to the protection of forage and other values, has, therefore, a rational basis and is not arbitrary or capricious.

United States v. Charles Maher, et al., 5 IBLA 209 (Mar. 21, 1972) 79 I.D. 109

When on appeal two grazing sub-units are so interrelated that apportionment cannot be properly determined for one without affecting the equities in the other, and it is determined that one of the apportionments should be remanded, both apportionments may be set aside and remanded so that they may be reconsidered together.

Joe H. Nettleton, et al. (Appellants), Elias Jaca, et al. (Intervenors), 7 IBLA 282 (Sept. 22, 1972)

An application for reinstatement of grazing privileges denied many years ago is properly rejected where the forage on the federal range is entirely allocated to permittees and licensees whose base property qualifications were adjudicated and have been recognized and license issued thereon for a period of three consecutive years prior to the application.

Although other applicants or licensees may have lost their right by reason of 43 CFR 4115.2-1(e)(13)(i) to have their or anyone else's license readjudicated, the Bureau of Land Management retains discretionary authority to make adjustments in a license at any time when necessary to comply with the Federal Range Code for Grazing Districts.

Benny Lucero, Appellant, Restie Sandoval and Matias Garcia, Intervenors, 8 IBLA 46 (Oct. 12, 1972)

An Administrative Law Judge's decision adjudicating grazing privileges within a grazing district will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal Range Code for Grazing Districts.

Lloyd Pewonka, James Caves and H. R. Sudbrack, Roy Kindle and Sons, 8 IBLA 303 (Dec. 7, 1972)

Where appellant's grazing privileges were adjudicated in 1964, which he accepted by signing an agreement specifying his grazing use and where between 1964 and 1970 he applied for grazing use in accordance with that adjudication and was licensed accordingly, appellant lost his right to appeal through failure to protest or appeal the adjudicatory decision of 1964. 43 CFR 4.470(b) formerly 43 CFR 1853.1(b).

Under the provisions of 43 CFR 4115.2-1(e)(9) a grazing licenses or permittee is precluded from seeking to increase his base property qualifications, where, for two or more consecutive years subsequent to the adjudication of his grazing privileges, he has filed applications for only those qualifications determined by the adjudicatory decision.

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

Under the provisions of 43 CFR 4115.2-1(e)(13)(i) a grazing licensee or permittee is precluded from questioning base property qualifications which have been recognized and licenses have issued for more than three consecutive years.

Phil Hillberry, 8 IBLA 428 (Dec. 21, 1972)

APPEALS

Where a grazing applicant signs a range-line agreement which is incorporated in a district manager's decision from which the applicant does not protest or appeal, the applicant is thereafter barred from challenging only those matters adjudicated in that decision. However, where the applicant subsequently appeals a district manager's partial rejection of his current grazing privileges, that appeal may properly be considered on its merits where it raises an issue of a boundary location which clearly was not the subject of the range-line agreement relied upon.

Evart Jensen, 5 IBLA 96 (Mar. 6, 1972)

The economic effect of the transfer, reduction or other change in grazing privileges of a particular range user is but one factor to be considered by the Board of Land Appeals in determining if a decision appealed from is unreasonable or should otherwise be reversed or modified.

United States v. Charles Maher, et al., 5 IBLA 209 (Mar. 21, 1972) 79 I.D. 109

An order of a hearing examiner dismissing an appeal to him, involving the partial rejection of a grazing nonuse application, which order was based upon the willful nonappearance of the appellant or his representative at the hearing scheduled, will be sustained.

Ben H. Lyon Estate v. State Director of Idaho, 5 IBLA 327 (Apr. 17, 1972)

When consideration of a denial to grant grazing privileges has become moot because of the expiration of the grazing season, the issue need not be resolved on appeal unless it will bear upon future awards, since grazing privileges for past seasons cannot be granted or past awards changed.

The filing of a court action to review a decision of this Department does not automatically suspend the effect of the decision. This Board, however, may order a suspension of the decision during the pendency of the court action if justice will thereby be served. If the action challenges the assessment of damages for a grazing trespass, unless the court orders otherwise, the grazing applicant's failure to pay the assessed damages will generally continue to serve as a bar to the issuance of any privileges to him until or unless the court finds the damages should not be assessed.

Eldon L. Smith, 5 IBLA 330 (Apr. 18, 1972) 79 I.D. 149

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

When consideration of a denial to grant grazing privileges has become moot because of the expiration of the grazing season, the issue need not be resolved on appeal unless it will bear upon future awards since grazing privileges for past seasons cannot be granted or past awards changed.

Eldon L. Smith, 6 IBLA 310 (July 12, 1972)

Where an appeal is taken from a hearing examiner's decision remanding a case to the Bureau of Land Management for reconsideration of the division of grazing use areas formerly grazed in common, the examiner's decision will not be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of 43 CFR 4110.

Joe H. Nettleton, et al. (Appellants), Elias Jaca, et al. (Intervenors), 7 IBLA 282 (Sept. 22, 1972)

An Administrative Law Judge properly dismissed an appeal by a grazing applicant which failed to state clearly and concisely why a district manager's decision was in error, and afforded no basis for a hearing.

Eldon L. Smith, 8 IBLA 86 (Nov. 3, 1972)

Where appellant's grazing privileges were adjudicated in 1964, which he accepted by signing an agreement specifying his grazing use and where between 1964 and 1970 he applied for grazing use in accordance with that adjudication and was licensed accordingly, appellant lost his right to appeal through failure to protest or appeal the adjudicatory decision of 1964. 43 CFR 4.470(b) formerly 43 CFR 1853.1(b).

Phil Hillberry, 8 IBLA 428 (Dec. 21, 1972)

APPORTIONMENT OF FEDERAL RANGE

Where a grazing applicant has executed a valid range-line agreement approved by this Department such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

Where a grazing applicant signs a range-line agreement which is incorporated in a district manager's decision from which the applicant does not protest or appeal, the applicant is thereafter barred from challenging only those matters adjudicated in that decision. However, where the applicant subsequently appeals a district manager's partial rejection of his current grazing privileges, that appeal may properly be considered on its merits where it raises an issue of a boundary location which clearly was not the subject of the range-line agreement relied upon.

Evart Jensen, 5 IBLA 96 (Mar. 6, 1972)

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE--Continued

A decision of a district manager which is arbitrary or capricious will not be sustained, when challenged by one who has standing, even in the absence of any evidence of serious economic impact. To that extent, National Livestock Company and Zack Cox, I.G.D. 55 (1938), is overruled.

A decision involving the exercise of administrative discretion, which is supportable on any rational basis, is not arbitrary or capricious. An apportionment of the federal range, involving some abolition of "split-use" between states and based upon the effectuation of a management plan reasonably related to the protection of forage and other values, has, therefore, a rational basis and is not arbitrary or capricious.

Elimination of a range user's so-called "split use" between two grazing districts by consolidation of his grazing privileges in a particular grazing district is reasonably incident to formulation and implementation of grazing management programs by the Bureau of Land Management and will be permitted to stand absent severe economic impact on the parties affected thereby.

The economic effect of the transfer, reduction or other change in grazing privileges of a particular range user is but one factor to be considered by the Board of Land Appeals in determining if a decision appealed from is unreasonable or should otherwise be reversed or modified.

United States v. Charles Maher, et al., 5 IBLA 209 (Mar. 21, 1972) 79 I.D. 109

No readjudication of the boundaries of an allotment of the federal range will be made on the claim of a grazing licensee or permittee who has accepted such boundaries as set forth in an agreement executed by his predecessors in interest, and for a period of three successive years immediately preceding his claim has been issued licenses for grazing privileges restricted to the area delineated by the agreement.

Eldon L. Smith, 6 IBLA 166 (June 14, 1972)

An allocation by district manager of the federal range into individual allotments will be adopted where the permittee is given an equitable share of the forage available in the unit and of the potential forage production of the unit, and the permittee has not shown that an increase of forage available in the area allotted to it is the result of its past efforts.

Where the evidence does not support the basis on which the district manager determined and allocated wildlife allowances within the individual allotments of a grazing unit, it is proper to remand the proceeding for a determination of these issues.

United States v. G & E Livestock Company, 7 IBLA 180 (Sept. 1, 1972)

Where an appeal is taken from a hearing examiner's decision remanding a case to the

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE--Continued

Bureau of Land Management for reconsideration of the division of grazing use areas formerly grazed in common, the examiner's decision will not be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of 43 CFR 4110.

Joe H. Nettleton, et al. (Appellants), Elias Jaca, et al. (Intervenors), 7 IBLA 282 (Sept. 22, 1972)

The boundary of an individual allotment will not be disturbed where it is based on a fence line established to resolve a dispute over areas of use and the licensee or permittee does not sustain his burden of proof to show the determination was in error.

United States v. John K. Johnson, 8 IBLA 68 (Oct. 26, 1972)

A decision of a District Manager locating a boundary of an allotment will be reversed where a permittee sustains his burden of proving that that boundary was in another location.

E. S. Kennon, 8 IBLA 118 (Nov. 14, 1972)

Where a grazing allotment includes both private and federal range lands, the Bureau of Land Management may properly determine the grazing capacity of all the lands in the allotment and require, as a condition to the issuance of a permit or license to graze the federal range, that the number of livestock using the private lands be limited to the recognized capacity of the lands.

Lloyd Pewonka, James Caves and H. R. Sudbrack, Roy Kindle and Sons, 8 IBLA 303 (Dec. 7, 1972)

BASE PROPERTY (LAND)

Generally

Where appellant's grazing privileges were adjudicated in 1964, which he accepted by signing an agreement specifying his grazing use and where between 1964 and 1970 he applied for grazing use in accordance with that adjudication and was licensed accordingly, appellant lost his right to appeal through failure to protest or appeal the adjudicatory decision of 1964. 43 CFR 4.470(b) formerly 43 CFR 1853.1(b).

Under the provisions of 43 CFR 4115.2-1(e)(9) a grazing licensee or permittee is precluded from seeking to increase his base property qualifications, where, for two or more consecutive years subsequent to the adjudication of his grazing privileges, he has filed applications for only those qualifications determined by the adjudicatory decision.

Under the provisions of 43 CFR 4115.2-1(e)(13)(i) a grazing licensee or permittee is precluded from questioning base property qualifications which have been recognized and licenses have issued for more than three consecutive years.

Phil Hillberry, 8 IBLA 428 (Dec. 21, 1972)

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)--Continued

Transfers

A letter from the owner of base property stating that such owner has no objection to a former owner applying to the Bureau of Land Management for reassignment of his former grazing privileges, is construed as written consent within the meaning of 43 CFR 4115.2-2(b)(3) which provides that no transfer of grazing privileges will be made without the written consent of the owner of the base property from which the transfer is to be made.

Bureau of Land Management, Appellant, Allard Cattle Company, Appellee, 5 IBLA 366 (Apr. 20, 1972)

BASE PROPERTY (WATER)

An application for increased grazing privileges is properly rejected where the applicant has failed to show that he controls sufficient base water to justify the award of such privileges and his allotment is lacking in fences to prevent the drift of cattle into other portions of the federal range located in an adjoining state.

Eldon L. Smith, 6 IBLA 166 (June 14, 1972)

CANCELLATION AND REDUCTIONS

A district manager is authorized to impose a downward adjustment of authorized grazing use by a licensee so as to conform such use to the established grazing capacity of an allotment, and he is not bound to follow recommendations of a district advisory board that a lesser reduction be imposed.

When necessary to reach the proper stocking rate of an allotment, a reduction in grazing privileges from 1825 AUM's to 324 AUM's in a single year may be construed as not imposing serious hardship upon a licensee whose grazing use of the allotment in the years immediately prior to imposition of the cut did not greatly exceed 324 AUM's and whose operation consists wholly of running steer calves bought in the fall of the year and sold during the following summer.

United States of America v. John W. Nicoll, 4 IBLA 333 (Feb. 14, 1972)

Elimination of a range user's so-called "split use" between two grazing districts by consolidation of his grazing privileges in a particular grazing district is reasonably incident to formulation and implementation of grazing management programs by the Bureau of Land Management and will be permitted to stand absent severe economic impact on the parties affected thereby.

United States v. Charles Maher, et al., 5 IBLA 209 (Mar. 21, 1972) 79 I.D. 109

A reduction in grazing use by a licensee or permittee is proper to conform the use to the established grazing capacity of the allotment.

United States v. John K. Johnson, 8 IBLA 68 (Oct. 26, 1972)

GRAZING PERMITS AND LICENSES--Continued

CANCELLATION AND REDUCTIONS--Continued

Where an applicant has been denied grazing privileges because he has failed to pay trespass damages assessed by the Secretary of the Interior but, despite repeated warnings by Bureau of Land Management personnel, he willfully and repeatedly grazed his livestock in trespass, an Administrative Law Judge, following a hearing on a show cause notice, properly assessed trespass damages and suspended the applicant's grazing privileges until three years after payment of the damages.

Eldon L. Smith, 8 IBLA 86 (Nov. 3, 1972)

A reduction in grazing use by a licensee or permittee is proper to conform the use to the established grazing capacity of the federal range.

Lloyd Pewonka, James Caves and H. R. Sudbrack, Roy Kindle and Sons, 8 IBLA 303 (Dec. 7, 1972)

HEARING EXAMINERS

Where pursuant to cooperative agreements for the construction of a fence on public land between appellant's and another's allotments and where all the parties have complied with the terms of the cooperative agreements, a request for partial reimbursement of costs on an equal basis may not be considered, because such issues were resolved in an earlier contract and it is essentially a dispute, if any, between private parties; and neither an Administrative Law Judge nor the Board of Land Appeals has authority to direct payment of compensation.

Phil Hillberry, 8 IBLA 428 (Dec. 21, 1972)

HEARINGS

An order of a hearing examiner dismissing an appeal to him, involving the partial rejection of a grazing nonuse application, which order was based upon the willful nonappearance of the appellant or his representative at the hearing scheduled, will be sustained.

Ben H. Lyon Estate v. State Director of Idaho, 5 IBLA 327 (Apr. 17, 1972)

RANGE SURVEYS

Where the weight of expert testimony at a hearing relating to the reduction of grazing privileges indicates the carrying capacity is greater than the figure established by a Bureau of Land Management range survey, the case will be remanded for further study to determine accurately the actual carrying capacity of the allotment in question.

United States of America v. John W. Nicoll, 4 IBLA 333 (Feb. 14, 1972)

GRAZING PERMITS AND LICENSES--Continued

RANGE SURVEYS--Continued

A determination by the Bureau of Land Management of the carrying capacity of a unit of the federal range will not be disturbed in the absence of positive evidence of error.

United States v. John K. Johnson, 8 IBLA 68 (Oct. 26, 1972)

A determination by the Bureau of Land Management of the carrying capacity of a unit of the federal range will not be disturbed in the absence of positive evidence of error.

Lloyd Pewonka, James Caves and H. R. Sudbrack, Roy Kindle and Sons, 8 IBLA 303 (Dec. 7, 1972)

TRESPASS

Where an applicant for grazing privileges has failed to pay assessed damages for a grazing trespass which assessment has been affirmed by the Secretary of the Interior, a district manager properly conditioned approval of the applicant's application upon payment of his outstanding trespass damages. No license or permit will be issued or renewed until payment of any amount found to be due has been offered.

The filing of a court action to review a decision of this Department does not automatically suspend the effect of the decision. This Board, however, may order a suspension of the decision during the pendency of the court action if justice will thereby be served. If the action challenges the assessment of damages for a grazing trespass, unless the court orders otherwise, the grazing applicant's failure to pay the assessed damages will generally continue to serve as a bar to the issuance of any privileges to him until or unless the court finds the damages should not be assessed.

Eldon L. Smith, 5 IBLA 330 (Apr. 18, 1972)
79 I.D. 149

Grazing livestock on federal public lands in excess of the authorized permit use, or without an appropriate license or permit, constitutes trespass for which damages may properly be assessed.

Where an applicant for grazing privileges has failed to pay damages assessed by the Secretary of the Interior for a grazing trespass, a district manager properly conditioned approval of the applicant's application upon payment of his outstanding trespass damages.

Where an applicant has been denied grazing privileges because he has failed to pay trespass damages assessed by the Secretary of the Interior but, despite repeated warnings by Bureau of Land Management personnel, he willfully and repeatedly grazed his livestock in trespass, an

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

Administrative Law Judge, following a hearing on a show cause notice, properly assessed trespass damages and suspended the applicant's grazing privileges until three years after payment of the damages.

Eldon L. Smith, 8 IBLA 86 (Nov. 3, 1972)

Where it has been determined that a grazing trespass on the Federal range is repeated or clearly willful, the value of the forage consumed shall be computed and assessed at $4 per animal-unit month, or twice the commercial rate if such amount is higher. Where the commercial rate is $4, the assessment of damages shall be at the rate of $8 per animal-unit month.

In calculating damages for trespass on the Federal range based upon the amount of forage consumed, whenever fractional animal-unit months are involved, their sum must be rounded upward to arrive at the total number of animal-unit months for which the damages are to be assessed.

Where a grazing licensee with a record of ten trespass violations over a period of three years commits additional violations, all of which are deemed to be repeated trespasses, a reduction in grazing privileges may be imposed and a 20-percent reduction of two years is justified.

John E. Walton, 8 IBLA 237 (Nov. 29, 1972)

HEARINGS

(See also Administrative Procedure, Federal Coal Mine Health and Safety Act of 1969, Grazing Permits and Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act)

A trade or manufacturing site claim is not to be canceled for defects not appearing on the face of the record without giving the claimant an opportunity to be heard. 43 U.S.C. § 687a (1970).

On appeal from the rejection of a trade and manufacturing site application, the case will be remanded for hearing when it appears that a hearing is necessary to determine whether the applicant has occupied the site for the purposes of trade, manufacture or other productive industry and has established on the land improvements needed in the prosecution of such activities. 43 U.S.C. § 687a (1970).

Don E. Jonz, 5 IBLA 204 (Mar. 20, 1972)

An order of a hearing examiner dismissing an appeal to him, involving the partial rejection of a grazing nonuse application, which order was based upon the willful nonappearance of the appellant or his representative at the hearing scheduled, will be sustained.

Ben H. Lyon Estate v. State Director of Idaho, 5 IBLA 327 (Apr. 17, 1972)

HEARINGS--Continued

Where a decision by the land office is based on an erroneous interpretation of the law, the matter will be remanded for reexamination by the land office. If the matter then cannot be resolved, a contest should be entered and a hearing ordered.

David A. Burns, 6 IBLA 171 (June 15, 1972)

A report of field examination is not evidence on which a desert land final proof may be rejected and the entry cancelled. Where final proof asserts full compliance with the law, and its showings are questioned, a contest complaint should be initiated to afford the entryman an opportunity for a hearing.

Calvin L. Howard, 6 IBLA 285 (June 30, 1972)

Where there were no outstanding permits, leases or applications for leases for minerals subject to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), when mining claims were located in 1945 and 1952, but the Geological Survey in 1968 has reported that the lands were known to be valuable for leasable minerals subject to that Act since 1920, a mining claimant is entitled to a hearing on the question of the known mineral character of the land at the time his claims were located before the claims can be declared void ab initio for his failure to file amended locations as required to take advantage of the benefits of section 1 of the Multiple Mineral Development Act of August 13, 1954, 30 U.S.C. § 521 (1970).

Meritt N. Barton, 6 IBLA 293 (July 7, 1972)
79 I.D. 431A

Where a factual dispute exists on appeal from rejection of a trade and manufacturing site application, the case will be remanded for a hearing to resolve disputed issues and determine if the applicant has occupied the site for the purposes of trade, manufacture, or other productive industry and has established on the land improvements needed in the prosecution of such activities.

Frontier Rock & Sand, Inc., 8 IBLA 112 (Nov. 14, 1972)

A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

Rudolph Chase and Raymond W. Voss, 8 IBLA 351 (Dec. 11, 1972)

A hearing will not be granted in connection with a headquarters site application where the applicant fails to allege probative facts which if proved would entitle her to favorable consideration of her application.

Kathleen M. Smyth, 8 IBLA 425 (Dec. 20, 1972)

HOMESTEADS (ORDINARY)
(See also Additional Homesteads, Enlarged Homesteads, Soldiers' Additional Homesteads)

GENERALLY

This Department has no authority to extend the life of a homestead entry beyond the limits prescribed by statute, and a request for an extension beyond the five-year statutory lifetime of an entry is properly denied.

Where an entryman requests an extension of time in which to file final proof and asserts that he needs the extension as additional time in which to comply with the residence and other requirements of the homestead law, the extension will not be granted and the entry will be canceled.

Robert J. Crawford, 6 IBLA 154 (June 8, 1972)

Where a contest record clearly establishes that the house on a homestead entry is not habitable at the time of final proof, the entry must be canceled.

United States v. Leonard F. Nelson, 8 IBLA 294 (Dec. 6, 1972)

APPLICATIONS

A homestead application filed for lands which are withdrawn for reclamation purposes and segregated by a classification to retain the land for multiple-use management must be rejected.

Curtis Wheeler, Billy J. Wheeler, 8 IBLA 148 (Nov. 16, 1972)

CANCELLATION OF ENTRY

This Department has no authority to extend the life of a homestead entry beyond the limits prescribed by statute, and a request for an extension beyond the five-year statutory lifetime of an entry is properly denied.

Where an entryman requests an extension of time in which to file final proof and asserts that he needs the extension as additional time in which to comply with the residence and other requirements of the homestead law, the extension will not be granted and the entry will be canceled.

Robert J. Crawford, 6 IBLA 154 (June 8, 1972)

This Department does not have authority to extend the statutory life of a homestead entry to permit the entryman to construct a habitable house on it after the expiration of the five year period, and the entry will be canceled if appellant fails to have a habitable house on the entry at the time for submission of final proof, absent a showing that equitable adjudication will lie.

A homestead entry is properly canceled for failure of the entryman to meet the cultivation requirements where he admits that he merely cleared the land by the end of the fourth year.

CANCELLATION OF ENTRY-Continued

A homestead entry is properly canceled for failure of the entryman to meet the residence requirements of the homestead law in that the entryman was absent from the homestead for a period of time exceeding five months each entry year and notice of the absence was not submitted to the land office as prescribed by statute.

Gene L. Brown, 7 IBLA 71 (Aug. 15, 1972)

Where a contest record clearly establishes that the house on a homestead entry is not habitable at the time of final proof, the entry must be canceled.

United States v. Leonard F. Nelson, 8 IBLA 294 (Dec. 6, 1972)

CULTIVATION

Where a homestead entry is made on permafrost lands, for which entry the entryman is entitled to two years credit for his military service, to be allocated to his second and third entry years, and the entryman during his fourth entry year plants no crops, but takes measures to drain the excessive moisture with a view to raising crops in the fifth entry year, and in fact does raise a crop during that year, the cultivation requirements of the homestead laws will be deemed to have been satisfied.

United States v. William Leonard Grediagin, 7 IBLA 1 (July 24, 1972)

A homestead entry is properly canceled for failure of the entryman to meet the cultivation requirements where he admits that he merely cleared the land by the end of the fourth year.

Gene L. Brown, 7 IBLA 71 (Aug. 15, 1972)

The cancellation of a homestead entry and the rejection of the final proof are proper when the final proof on its face shows a failure by the entrywoman to satisfy the residence and cultivation requirements of the homestead law.

Lois A. Mayer, 7 IBLA 127 (Aug. 24, 1972)

When final proof shows that an entryman met the cultivation requirement for the fifth entry year and that such entryman is entitled to two years' credit for military service which he may allocate to the partial satisfaction of his residence and cultivation requirements, leaving a one-year deficiency in cultivation, and where facts are alleged which, if proved, might excuse the entryman's failure to cultivate during that year, the case will be remanded to the land office for a determination of whether the entryman's misfortunes were the cause of his failure to meet the balance of the cultivation requirement.

Bobby L. Cox, 7 IBLA 277 (Sept. 20, 1972)

HOMESTEADS (ORDINARY)--Continued

CULTIVATION--Continued

A homestead final proof submitted at the end of the fifth entry year must be rejected and the entry canceled where it shows on its face that the entryman has not cultivated in any of the entry years.

A request for reduction of the homestead cultivation requirements is properly denied where the record shows that the entryman has failed to cultivate any of the cultivable land within the entry.

Ronald E. Hurst, 8 IBLA 1 (Oct. 3, 1972)

Where the final proof submitted by a homestead entryman shows that the cultivation requirements of the homestead laws have not been met, the final proof is defective on its face and is subject to rejection unless a reduction in the cultivation requirements is warranted.

An application for a reduction in the area required to be cultivated on a homestead entry is properly rejected where the conditions prescribed by regulation for such a reduction do not exist.

DeWitt W. Fields, 8 IBLA 160 (Nov. 22, 1972)

FINAL PROOF

The cancellation of a homestead entry and the rejection of the final proof are proper when the final proof on its face shows a failure by the entrywoman to satisfy the residence and cultivation requirements of the homestead law.

Lois A. Mayer, 7 IBLA 127 (Aug. 24, 1972)

A homestead final proof submitted at the end of the fifth entry year must be rejected and the entry canceled where it shows on its face that the entryman has not cultivated in any of the entry years.

Ronald E. Hurst, 8 IBLA 1 (Oct. 3, 1972)

Where no appeal is taken from a decision canceling a homestead entry for failure to submit final proof at the expiration of the term of the entry, and final proof is submitted six years subsequent to such decision, res judicata and the doctrine of finality of administrative action bar further consideration of the case when an appeal is taken from a decision rejecting final proof.

John W. Roth, 8 IBLA 39 (Oct. 11, 1972)

Where the final proof submitted by a homestead entryman shows that the cultivation requirements of the homestead laws have not been met, the final proof is defective on its face and is subject to rejection unless a reduction in the cultivation requirements is warranted.

DeWitt W. Fields, 8 IBLA 160 (Nov. 22, 1972)

HOMESTEADS (ORDINARY)--Continued

FINAL PROOF--Continued

Where a contest record clearly establishes that the house on a homestead entry is not habitable at the time of final proof, the entry must be canceled.

United States v. Leonard F. Nelson, 8 IBLA 294 (Dec. 6, 1972)

HABITABLE HOUSE

This Department does not have authority to extend the statutory life of a homestead entry to permit the entryman to construct a habitable house on it after the expiration of the five year period, and the entry will be canceled if appellant fails to have a habitable house on the entry at the time for submission of final proof, absent a showing that equitable adjudication will lie.

Gene L. Brown, 7 IBLA 71 (Aug. 15, 1972)

Where a contest record clearly establishes that the house on a homestead entry is not habitable at the time of final proof, the entry must be canceled.

United States v. Leonard F. Nelson, 8 IBLA 294 (Dec. 6, 1972)

The equitable adjudication statute, 43 U.S.C. §§ 1161, et seq. (1970), is intended to vest discretion in the Secretary to grant patents or other relief, despite some lack of compliance with a statutory requirement, where there has been substantial good faith compliance with the requirements of the homestead law as a whole.

Although homestead residence was made and improvements were erroneously located on withdrawn lands, patent may still issue as to the nonwithdrawn portion under the doctrine of equitable adjudication, where the entryman relied upon erroneous information furnished by a State Office, he exercised reasonable care and good faith in seeking to determine the boundaries, and his residence and improvements are adjacent to the remaining land.

Francis I. Hunt, 8 IBLA 390 (Dec. 19, 1972)

LANDS SUBJECT TO

Land which has been patented as a Mexican land grant confirmed in accordance with the Act of March 3, 1851, is not subject to application under any of the public land laws, and any such application must be rejected.

Clarence H. Hunt, Mamie M. Hunt, 5 IBLA 389 (May 4, 1972)

A homestead application filed for lands which are withdrawn for reclamation purposes and segregated by a classification to retain the land for multiple-use management must be rejected.

Curtis Wheeler, Billy J. Wheeler, 8 IBLA 148 (Nov. 16, 1972)

HOMESTEADS (ORDINARY)--Continued

LANDS SUBJECT TO--Continued

Final proof for a homestead initiated by settlement is properly rejected to the extent that the land was included in a withdrawal for a power project prior to the time of settlement.

William Henry Weaver, 8 IBLA 313 (Dec. 7, 1972)

While the Departmental practice is that a quarter quarter section, i.e., forty acres, is ordinarily the minimum unit of land for classification and disposal, the practice may be waived by the Secretary and homestead permitted for a smaller area, where the entryman relied upon erroneous information furnished by a State Office and he exercised reasonable care and good faith in locating his boundaries.

Francis I. Hunt, 8 IBLA 390 (Dec. 19, 1972)

MILITARY SERVICE

Where a homestead entry is made on permafrost lands, for which entry the entryman is entitled to two years credit for his military service, to be allocated to his second and third entry years, and the entryman during his fourth entry year plants no crops, but takes measures to drain the excessive moisture with a view to raising crops in the fifth entry year, and in fact does raise a crop during that year, the cultivation requirements of the homestead laws will be deemed to have been satisfied.

United States v. William Leonard Grediagin, 7 IBLA 1 (July 24, 1972)

When final proof shows that an entryman met the cultivation requirement for the fifth entry year and that such entryman is entitled to two years' credit for military service which he may allocate to the partial satisfaction of his residence and cultivation requirements, leaving a one-year deficiency in cultivation, and where facts are alleged which, if proved, might excuse the entryman's failure to cultivate during that year, the case will be remanded to the land office for a determination of whether the entryman's misfortunes were the cause of his failure to meet the balance of the cultivation requirement.

Bobby L. Cox, 7 IBLA 277 (Sept. 20, 1972)

PREFERENCE RIGHTS

A party who initiated a contest against a homestead entry prior to any action by the Department to cancel the entry, which contest is eventually successful, obtains the preference right granted by 43 U.S.C. § 185 (1970), provided he "procures" the cancellation of the homestead entry, even though the Department subsequently intervenes and introduces independent evidence to cancel the entry.

Paul Unruh, 8 IBLA 231 (Nov. 29, 1972)

HOMESTEADS (ORDINARY)--Continued

RESIDENCE

A homestead entry is properly canceled for failure of the entryman to meet the residence requirements of the homestead law in that the entryman was absent from the homestead for a period of time exceeding five months each entry year and notice of the absence was not submitted to the land office as prescribed by statute.

Gene L. Brown, 7 IBLA 71 (Aug. 15, 1972)

The cancellation of a homestead entry and the rejection of the final proof are proper when the final proof on its face shows a failure by the entrywoman to satisfy the residence and cultivation requirements of the homestead law.

Lois A. Mayer, 7 IBLA 127 (Aug. 24, 1972)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

Where an application is filed for an Indian allotment for lands within a national forest, as provided by the Act of June 25, 1910, 25 U.S.C. §337 (1970), the Secretary of the Interior, before passing upon the entitlement of the applicant to the lands applied for, must first have received a determination by the Secretary of Agriculture that the lands are more valuable for agricultural and grazing purposes than for the timber found thereon.

Curtis D. Peters, 6 IBLA 5 (May 9, 1972)

An application for an Indian allotment within a national forest is properly rejected where the Department of Agriculture has determined that the land is more valuable for timber production than for agricultural and grazing purposes.

An application for an Indian allotment within a national forest is properly rejected where the Department of Agriculture finds that the lands applied for fail to meet the requirements of the Indian Allotment Act of June 25, 1910.

Junior Walter Daugherty, 7 IBLA 291 (Sept. 22, 1972)

LANDS SUBJECT TO

Where an application is filed for an Indian allotment for lands within a national forest, as provided by the Act of June 25, 1910, 25 U.S.C. §337 (1970), the Secretary of the Interior, before passing upon the entitlement of the applicant to the lands applied for, must first have received a determination by the Secretary of Agriculture that the lands are more valuable for agricultural and grazing purposes than for the timber found thereon.

Curtis D. Peters, 6 IBLA 5 (May 9, 1972)

INDIAN LANDS
(See also Indian Probate)

GENERALLY

The failure of a mining claimant to make the required annual rental payments in advance for claims located under the Act of June 18, 1934, 48 Stat. 984, as amended, August 28, 1937; 50 Stat. 862, 863, within the Papago Indian Reservation is a sufficient basis for invalidating the claims where the annual rental payments were not remitted until almost three months after the due date and no explanation is offered for the delay.

I.M. and Robert L. Clausen, 7 IBLA 286 (Sept. 22, 1972)

INDIAN PROBATE

100.0 GENERALLY

A determination of the heirs of a deceased Indian is controlling only as to the estate of the decedent, and it does not have collateral application in the determination of the heirs of decedent's relatives.

Estate of Basil Blackburn, 1 IBIA 261 (June 26, 1972) 79 I.D. 422

The Department of the Interior does not have the authority to declare a federal statute unconstitutional.

Estate of Benjamin Harrison Stowhy (Deceased Yakima Allottee No. 2455) and Estate of Mary G. Guiney Harrison (Deceased Colville Allottee No. S-925), 1 IBIA 269 (June 30, 1972) 79 I.D. 428

A determination of the heirs of a deceased Indian is controlling only as to the estate of the decedent, and the findings in each case must be supported by a preponderance of the evidence.

Estates of Kate Bitner and Rae Bitner, 1 IBIA 277 (July 12, 1972) 79 I.D. 437

The Fort Belknap Allotment Act of March 3, 1921 (41 Stat. 1355) and the Acts which it amended are construed in pari materia with each other and with the General Allotment Act of February 8, 1887 (24 Stat. 388, 25 U.S.C. § 331 et seq.) as amended.

Estate of Spear, 1 IBIA 284 (July 18, 1972) 79 I.D. 450

The Department of the Interior does not have authority to declare a statute of a state to be unconstitutional as being in violation of the constitution of the United States.

Estate of Florence Bluesky Vessell (Unallotted Lac Courte Oreilles Chippewa of Wisconsin, 1 IBIA 312 (Sept. 27, 1972) 79 I.D. 615

ADMINISTRATIVE PROCEDURE

105.1 Applicability to Indian Probate

Examiners must conform to the requirements of the Administrative Procedure Act, 5 U.S.C. § 557 (1970) and include findings of fact and conclusions of law in their orders and decisions in Indian probate.

Estate of San Pierre Kilkakhan (Sam E. Hill), 1 IBIA 299 (Sept. 15, 1972) 79 I.D. 583

INDIAN PROBATE--Continued

ADMINISTRATIVE PROCEDURE--Continued

105.2 Official Notice, Record

No official notice of records can be taken if such record is not introduced in evidence, or identified as required by the Administrative Procedure Act, 5 U.S.C. § 556(e) (1970) so as to be available subject to challenge by the aggrieved party.

Estate of San Pierre Kilkakhan (Sam E. Hill), 1 IBIA 299 (Sept. 15, 1972) 79 I.D. 583

ADOPTION

110.0 Generally

Where the death of the decedent and the probate of his estate occurred prior to the effective date of 54 Stat. 746, 25 U.S.C. § 372a (1970), on January 8, 1941, a lack of a written record of an adoption completed during decedent's lifetime is no bar to recognition of such adoption in a proceeding to determine decedent's heirs.

Estate of Jennie L. Brown Bearing (Deceased Wind River Allottee No. C323), 1 IBIA 320 (Sept. 28, 1972) 79 I.D. 619

AGGRIEVED PARTIES

121.0 Generally

A petition to reopen an estate which has been closed more than three years will be summarily denied when neither the petition nor the record reveals that the petitioners have any interest in the estate.

Estate of Jennie L. Brown Bearing (Deceased Wind River Allottee No. C323), 1 IBIA 320 (Sept. 28, 1972) 79 I.D. 619

APPEAL

130.2 Dismissal

Timely service of a notice of appeal on all adverse parties is a jurisdictional requirement under the Indian probate regulations and failure of a party seeking an appeal to make such service will result in dismissal of the appeal.

Estate of Grace First Eagle Tolbert (Talbert) (Deceased Allottee No. 1318 of the Fort Peck Indian Reservation of Montana) 1 IBIA 209 (Feb. 4, 1972) 79 I.D. 13

A petition for rehearing which alleges newly discovered evidence as a basis for a rehearing and fails to set out any evidence or any other grounds which would require a rehearing does not meet the requirements of 43 CFR § 4.241 and an appeal from the denial of the petitioned rehearing will be dismissed.

Estate of Lucy Feathers (Grace Medicinebird Lefthand, Bitner, Ridgby, White Plume, or Geary), Deceased Araphaho of Oklahoma, 1 IBIA 336 (Dec. 11, 1972) 79 I.D. 693

An appeal from the denial of a rehearing will be dismissed when a petition for rehearing, apparently based on newly discovered evidence, does not allege evidence of sufficient weight to cause a possible change in the original decision.

INDIAN PROBATE--Continued

APPEAL--Continued

130.2 Dismissal--Continued

A petition for rehearing, apparently based on newly discovered evidence, was properly denied when the petition, by not stating why such evidence was not discovered and presented at prior hearings, failed to comply with 43 CFR § 4.241(a) and an appeal from the denial will be dismissed.

Estate of Frank Jones (Deceased Fort Peck Allottee), 1 IBIA 345 (Dec. 19, 1972) 79 I.D. 697

130.3 Examiner as Trier of Facts

Where there is sufficient evidence to support the finding and the testimony is conflicting, the determination of witness credibility and the findings of fact by the Examiner will not be disturbed because only he had the opportunity to hear and observe the witnesses.

Estate of Crawford J. Reed, (Unallotted Crow No. 6412), 1 IBIA 326 (Sept. 28, 1972) 79 I.D. 621

130.5 Reconsideration

Ordinarily, a decision on appeal by the Board of Indian Appeals becomes a final Departmental decision and upon the issuance of such decision the parties are deemed to have exhausted their administrative remedies.

Estate of Lucy Hope Deepwater (Deceased Shoshone-Flathead Allottee 1234, Probate No. F-12-71), 1 IBIA 241 (Mar. 17, 1972) 79 I.D. 108

130.7 Timely Filing

When a notice of appeal, postmarked a day after the expiration of the period, as extended, provided by regulation for filing an appeal, was not filed in the Judge's office until two days after the expiration of the period, as extended, the appeal is summarily dismissed as not timely filed.

Estate of Stephen Bear a/k/a Steven Bear, ValJean Bear, Steven P. Pete (Deceased Sac and Fox), 1 IBIA 356 (Dec. 29, 1972) 79 I.D. 729

ATTORNEYS AT LAW

140.0 Generally

An attorney appearing in Indian Probate proceedings must disclose the name of the party represented by him.

Estate of Florence Bluesky Vessell (Unallotted Lac Courte Oreilles Chippewa of Wisconsin, 1 IBIA 312 (Sept. 27, 1972) 79 I.D. 615

Misstatements of law and an erroneous statutory citation in a brief casts doubt on the merits of the appeal and the professional ability of the attorney who filed the brief.

Estate of Lucy Feathers (Grace Medicinebird Lefthand, Bitner, Ridgby, White Plume, or Geary). Deceased Araphaho of Oklahoma, 1 IBIA 336 (Dec. 11, 1972) 79 I.D. 693

INDIAN PROBATE--Continued

ATTORNEYS AT LAW--Continued

140.2 Fees

The allowance of attorney's fees is discretionary and based not only on the results produced but on what the services themselves are worth considering the labor, time, talent and skill the attorney expended.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326 (Sept. 28, 1972) 79 I.D. 621

BOARD OF INDIAN APPEALS

145.0 Generally

When the Bureau of Indian Affairs petitions for the correction of an error in a probate order issued more than three years prior to the date of petition, the matter may be finally decided for the Department by the Board of Indian Appeals in the exercise of the discretion reserved by the Secretary in 25 CFR 1.2 and delegated to the Board in 43 CFR 4.242(h).

Estate of Spear, 1 IBIA 284 (July 18, 1972) 79 I.D. 450

CHILDREN, ILLEGITIMATE

160.1 Right to Inherit

160.1.3 Child from Father

Once a child has been determined to be a child of a deceased Indian, Title 25 U.S.C. § 371 applies and authorizes the descent of its deceased father's lands to the child as an heir whether the parents of the child cohabited or not.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326 (Sept. 28, 1972) 79 I.D. 621

CLAIM AGAINST ESTATE

165.1 Allowable Items

A claim for attorney's fees is not allowable as a charge against the estate where the services were performed on behalf of the attorney's client and were neither on behalf of the estate nor of benefit to the estate.

A claim for attorney's fees by an attorney who successfully represented a client whose interests were in opposition to creditors of the estate and the heir at law is a private business matter with his client and not a proper claim against the estate as an administration expense.

Estate of John J. Akers (Deceased Fort Peck Indian Allottee No. 1921), 1 IBIA 246 (May 24, 1972) 79 I.D. 404

165.13 Source of Funds for Payment

Where the restricted estate, consisting only of trust land, is awarded the devisee in the probate proceeding, the interest so received cannot be subjected to a claim for attorney's fees.

Estate of John J. Akers (Deceased Fort Peck Indian Allottee No. 1921), 1 IBIA 246 (May 24, 1972) 79 I.D. 404

INDIAN PROBATE--Continued

EVIDENCE

225.1 Conflicting Testimony

The basic rule that the examiner's findings of fact will not be disturbed where there is conflicting testimony has no application where it does not appear the decision was based upon examiner's particular observation or evaluation of the witnesses or the statements made by them and he made no finding regarding the credibility of the witnesses.

Estate of San Pierre Kilkakhan (Sam E. Hill), 1 IBIA 299 (Sept. 15, 1972) 79 I.D. 583

225.2 Hearsay Evidence

Hearsay evidence is admissible as an exception to the general rule where it pertains to matters of family history, relationship and pedigree.

Estate of San Pierre Kilkakhan (Sam E. Hill), 1 IBIA 299 (Sept. 15, 1972) 79 I.D. 583

HEARING EXAMINER

260.0 Generally

The rule that a trial examiner's findings should not be disturbed on appeal unless "clearly erroneous" is not applicable by administrative appellate tribunals, but pertains only to judicial review by the courts.

Estate of San Pierre Kilkakhan (Sam E. Hill), 1 IBIA 299 (Sept. 15, 1972) 79 I.D. 583

INDIAN REORGANIZATION ACT OF JUNE 18, 1934 (WHEELER-HOWARD ACT) (25 U.S.C. § 464)

270.0 Generally

The Indian Reorganization Act of June 18, 1934 (48 Stat. 985, 25 U.S.C. § 464), under which the tribes of the Fort Belknap Reservation placed themselves by an affirmative vote in the election held for that purpose on October 17, 1934, followed by a constitution approved December 13, 1935, and a charter ratified August 25, 1937, did not enlarge upon but rather it restricted the right of the allottees and their successors to dispose of trust property by will.

Estate of Spear, 1 IBIA 284 (July 18, 1972) 79 I.D. 450

NOTICE OF HEARING

345.0 Generally

There is a presumption that persons living within the vicinity of the posting places specified in 25 CFR § 15.2 will have notice of hearing because the posting requirements of the section insure such notice is reasonably probable.

Estate of Frank Jones (Deceased Fort Peck Allottee), 1 IBIA 345 (Dec. 19, 1972) 79 I.D. 697

RECONSIDERATION

365.0 Generally

Reconsideration of a decision on appeal will not be granted except upon a showing of manifest error in such decision.

Estate of Lucy Hope Deepwater (Deceased Shoshone-Flathead Allottee 1234, Probate No. F-12-71), 1 IBIA 241 (Mar. 17, 1972) 79 I.D. 108

INDIAN PROBATE--Continued

REHEARING

370.0 Generally

The requirements in 43 CFR § 4.241 that a petition for rehearing must state specifically and concisely the grounds upon which it is based, and shall fully set out any newly discovered evidence are for the purpose of allowing the presiding officer the opportunity to make a judgment as to whether a further hearing is warranted.

An order denying a rehearing is proper when the petition for rehearing alleging newly discovered evidence fails to state the alleged newly discovered evidence and fails to state any other grounds which would require a rehearing and, accordingly, an appeal from the denial will be dismissed.

Estate of Lucy Feathers (Grace Medicinebird Lefthand, Bitner, Ridgby, White Plume, or Geary), Deceased Araphaho of Oklahoma, 1 IBIA 336 (Dec. 11, 1972) 79 I.D. 693

The requirements in 43 CFR § 4.241(a) that a petition for rehearing must state specifically and concisely the grounds upon which it is based, and shall fully set out any newly discovered evidence are for the purpose of allowing the presiding officer the opportunity to make a judgment as to whether a further hearing is warranted.

A rehearing was properly denied where a person who lived near a posting place on a reservation which was twice posted in five places with notice of hearing and notice of rehearing respectively, and who, by a mere allegation of lack of notice, fails to meet the burden of proof necessary to overcome the presumption of notice.

Estate of Frank Jones (Deceased Fort Peck Allottee), 1 IBIA 345 (Dec. 19, 1972) 79 I.D. 697

370.1 Pleading, Timely Filing

Only the Secretary of the Interior has the authority to waive or make exceptions to the regulations setting forth time limitations for filing pleadings and, with the exception of the Board of Indian Appeals to whom he has delegated such authority, personnel of the Bureau of Indian Affairs and other employees of the Department of the Interior have no authority to waive such regulations, whether done intentionally, or inadvertently by rendering erroneous advice to a party who acts on the same to his prejudice.

Estate of Lucy Hope Deepwater (Deceased Shoshone-Flathead Allottee 1234 Probate No. F-12-71), 1 IBIA 241 (Mar. 17, 1972) 79 I.D. 108

REOPENING

375.1 Waiver of Time Limitation

An estate will not be reopened in the exercise of the Secretary's discretion to waive the time limitations where the interests remaining in the estate which could be acquired by an omitted heir are insubstantial.

It is in the public interest to issue decisions which remove uncertainties or possible clouds from titles to interests in Indian allotments.

Estate of Basil Blackburn, 1 IBIA 261 (June 26, 1972) 79 I.D. 422

INDIAN PROBATE--Continued

REOPENING--Continued

375.1 Waiver of Time Limitation--Continued

No manifest injustice sufficient to justify exercise of the Secretary's discretion for the correction of an error committed 58 years ago is found where the share of which the heir or devisee was deprived is insubstantial, and the benefits to his successors would be now further reduced by fractionation of the original share.

Estates of Kate Bitner and Rae Bitner, 1 IBIA 277 (July 12, 1972) 79 I.D. 437

When the authority granted to a hearing examiner in 43 CFR 4.242(a) to reopen a decided probate has expired, the Board of Indian Appeals may consider the matter under 43 CFR 4.242(h), and under the authority delegated there may exercise the Secretary's discretion to reopen, but the petition to reopen will be denied when a full consideration of the record discloses that the original decision contained no error.

Estate of Spear, 1 IBIA 284 (July 18, 1972) 79 I.D. 450

The Secretary will not exercise his discretion to waive time limitations for reopening a probate when it has been closed 32 years and there is a lack of diligence on the part of the petitioners during such period to obtain correction of an alleged mistake which they fail to attribute to fraud, accident or mistake in the original proceedings, and when they fail to allege the existence of a manifest injustice or how it might be corrected if reopening were permitted.

Estate of Jennie L. Brown Bearing (Deceased Wind River Allottee No. C323), 1 IBIA 320 (Sept. 28, 1972) 79 I.D. 619

SECRETARY'S AUTHORITY

381.0 Generally

The rule that a trial examiner's findings should not be disturbed on appeal unless "clearly erroneous" is not applicable by administrative appellate tribunals, but pertains only to judicial review by the courts.

Estate of San Pierre Kilkakhan (Sam E. Hill), 1 IBIA 299 (Sept. 15, 1972) 79 I.D. 583

STATE LAW

390.0 Generally

Montana statutes pertaining to inheritance from illegitimates are derived from early California statutes pertaining to the same subject, and under such statutes a father of an illegitimate may not inherit from his illegitimate child unless (1) the father, after marrying the mother has adopted the illegitimate into his own family, or (2) the father, after marrying the mother of the illegitimate, acknowledges his paternity.

Estate of Charles Track, a/k/a Charles Afraid of his Track (Deceased Fort Peck Allottee No. 1106, Probate No. K-61-69-S), 1 IBIA 216 (Mar. 15, 1972) 79 I.D. 83

390.2 Applicability to Indian Probate, Testate

The authority of the Secretary of the Interior, under 25 U.S.C. § 373, to approve the will of a deceased Indian when it disposes of trust or restricted property is

INDIAN PROBATE--Continued

STATE LAW--Continued

390.2 Applicability to Indian Probate, Testate --Continued

not subject to state law requirements provided the will is executed in accordance with regulations approved by the Secretary.

Estate of Lucy Feathers (Grace Medicinebird Lefthand, Bitner, Ridgby, White Plume, or Geary). Deceased Araphaho of Oklahoma, 1 IBIA 336 (Dec. 11, 1972) 79 I.D. 693

WILLS

425.0 Generally

The expectancy of title to minerals under an allotment created upon issuance of a trust patent under the Fort Belknap Allotment Act of March 3, 1921 (41 Stat. 1355) is trust property capable of dispositon by will.

Estate of Spear, 1 IBIA 284 (July 18, 1972) 79 I.D. 450

425.25 Revocation

The concept of revival of previously revoked wills is cognizable in Indian probate cases and where it appears that the Indian testator intended to republish by codicil a will which had been revoked by a subsequent will, the earlier will is deemed to have been revived by the codicil and the intervening will revoked by the codicil.

Estate of Charles Track, a/k/a Charles Afraid of his Track (Deceased Fort Peck Allottee No. 1106, Probate No. K-61-69-S), 1 IBIA 216 (Mar. 15, 1972) 79 I.D. 83

INDIAN TRIBES

ATTORNEYS

As secretarial approval of compromise settlements of tribal claims against the United States are not required by statute, tribal claims attorney contracts which provide for such secretarial approval should be modified so as not to require secretarial approval of compromise settlements in which the Secretary is a "real party defendant" since in those situations it would be clear breach of his fiduciary obligation to counsel a tribe in the prosecution and settlement of its claim while at the same time defending against the claim.

Tribal Claims Attorney Contracts; "Approval of Settlement" Provisions, M-36855 (June 2, 1972)

CONTRACTS

Generally

As secretarial approval of compromise settlements of tribal claims against the United States are not required by statute, tribal claims attorney contracts which provide for such secretarial approval should be modified so as not to require secretarial approval of compromise settlements in which the Secretary is a "real party defendant" since in those situations it would be clear breach of his fiduciary obligation to counsel a tribe in the prosecution and settlement of its claim while at the same time defending against the claim.

Tribal Claims Attorney Contracts; "Approval of Settlement" Provisions, M-36855 (June 2, 1972)

INDIAN TRIBES--Continued

HUNTING AND FISHING

On Reservation

The Leech Lake Band of Chippewa Indians, as a constituent element of the Minnesota Chippewa Tribe, possesses such powers of self-government, under the Indian Reorganization Act of 1934, as have been delegated to it by the parent tribe. These include the authority to regulate hunting, fishing, and ricing within the Leech Lake Reservation. The band also possesses the authority to enforce its tribal hunting, fishing and ricing regulations against its own members within the reservation.

To Regulate Hunting, Fishing and Ricing by its Members within the Boundaries of the Leech Lake Reservation, and to Enforce Those Regulations Against its Members, M-36864 (Oct. 10, 1972)

RESERVATIONS

Where an Executive Order establishing an Indian reservation on public lands of the United States included a reference to unsurveyed and unappropriated public lands adjacent to specifically described subdivisions and between said specifically described subdivisions and the waters of an adjacent river as would, upon an extension of the lines of existing surveys, constitute fractional portions of specifically named quarter sections of a named section, the reference to portions of the section shall be deemed to be words of description and not words of limitation so that the Indians would have rights as riparian owners to the accreted lands found to lie between such projected section lines, when established, and the waters of the adjacent river.

Title to Accretion Lands Adjacent to Cocopah Indian Reservation, Arizona, M-36867 (Dec. 21, 1972)

INVENTIONS

Under Department's Patent Regulations, 43 CFR 6, subpart A, section 6.5, employee-inventor retains all rights, subject to law, in an invention he made having utility in his official duties where such duties do not include devising innovations, or participation in research and development, and the Government's contribution to making the invention is insignificant.

Employee invention in an intangible notation system appearing to be outside the statutory classes of invention eligible for patent protection is not an appropriate subject for a patent application to be filed at government expense in exchange for license to Government.

Employee-inventor's acceptance of government cash award given in consideration of his making invention would secure for the Government a right to use invention free from any further claim that might be based thereon; 5 U.S.C. sec. 2123(d) (1964).

Rights to Invention Made by Employee, M-36814 (Jan. 13, 1972) 79 I.D. 3

Under the Department's Patent Regulations, 43 CFR 6, subpart A, section 6.5, it is presumed that the Government has all rights in an invention made by an employee who is assigned or employed to conduct or perform research or development work. However, the presumption is rebuttable depending upon the facts and circumstances in the case.

Employee whose assigned duties broadly comprise research and development work and who makes an invention having no direct relationship to his

INVENTIONS--Continued

official duties, nor in consequence of his official duties, and without contribution of any kind by the Government retains all rights in the invention subject to law.

Rights to Invention Made by Employee, M-36850 (May 16, 1972)

Rights to an employee invention are determined by Department's Patent Regulations, subpart A, section 6.5.

Regulations provide that Government obtains ownership if invention (a) was made during working hours, or (b) made with government contribution or (c) bears direct relation to or is made in consequence of inventor's duties.

Official duties, which essentially require inventor to economically evaluate Office of Saline Water's research and development projects, do not require inventor to perform research and development work, and therefore inventor's desalination invention does not bear a direct relation to nor was it made in consequence of official duties.

Inventor entitled to retain ownership because invention (a) was made on own time, (b) made without government contribution and (c) does not bear a direct relation to nor was it made in consequence of official duties.

Rights to Invention Made by Employee, M-36854 (May 16, 1972)

JUDICIAL REVIEW
(See also Administrative Procedure)

The filing of a court action to review a decision of this Department does not automatically suspend the effect of the decision. This Board, however, may order a suspension of the decision during the pendency of the court action if justice will thereby be served. If the action challenges the assessment of damages for a grazing trespass, unless the court orders otherwise, the grazing applicant's failure to pay the assessed damages will generally continue to serve as a bar to the issuance of any privileges to him until or unless the court finds the damages should not be assessed.

Eldon L. Smith, 5 IBLA 330 (Apr. 18, 1972) 79 I.D. 149

LIEU SELECTIONS

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for that purpose.

Frederick Siemon, 6 IBLA 156 (June 8, 1972)

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for the purpose.

Lester J. Gendron, 6 IBLA 288 (July 3, 1972)

MATERIALS ACT

The Materials Act does not permit a free-use permit to be issued for mineral materials where disposal is otherwise specifically authorized by law. A free-use permit may not be issued in lieu of a material site duly applied for under the Federal Highway Act.

State of Oregon, 6 IBLA 72 (May 22, 1972)

A request for extension of time in which to remove mineral materials (cinders) is properly denied where the purchaser failed to comply with the sale terms within the five-year period of the contract or during the ensuing three one-year extensions, and where it is not shown that the delay in the removal was due to causes beyond the control of the purchaser.

American Pozzolan Corporation, 6 IBLA 344 (July 14, 1972)

MINERAL LANDS

GENERALLY

A single discovery of a valuable mineral deposit is sufficient to validate an association placer mining claim embracing 80 acres, and each 10-acre subdivision within the claim is properly determined to be mineral in character where the mineral material present is of a homogeneous nature throughout the entire 80 acre claim.

United States v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21 (July 26, 1972) 79 I.D. 457

Where in a proceeding under the section 5 of Surface Resources Act, 30 U.S.C. § 613 (1970), the Government has accepted a verified statement by a mining claimant alleging surface rights to the land within his claims, such acceptance being conditioned upon a stipulation which expressly provides that "nothing herein shall be construed as precluding the United States from contesting the validity of these claims by subsequent proceedings," and where no mention is made of the mineral character of the claims, no determination has been made by the Government that the land is mineral in character.

The issuance of a final certificate to a mining claim does not constitute a determination that land is mineral in character.

In order that land be considered mineral in character, as contemplated by the mining laws, the known conditions must be such as reasonably to engender the belief that the land contains mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end. It is not necessary to show that the land contains a valid mining claim; the character of land as mineral may be determined through geologic inference, by the presence of minerals in substantial quantities on adjacent lands, or by other external conditions.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF

To establish the mineral character of lands it must be shown that the known conditions are such as to engender the belief that the lands contain mineral of such quality and quantity as to render its extraction profitable and justify expenditure to that end; the mineral character of the land may be established by inference without the exposure of the mineral deposit for which the land is supposed to be valuable.

Since geological inference may be used in establishing the mineral character of lands within a claim and such inferences can arise from proof of discovery on the claim, it is advisable not to dispose of the issue of mineral character before deciding the issue of discovery.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

Where there were no outstanding permits, leases or applications for leases for minerals subject to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), when mining claims were located in 1945 and 1952, but the Geological Survey in 1968 has reported that the lands were known to be valuable for leasable minerals subject to that Act since 1920, a mining claimant is entitled to a hearing on the question of the known mineral character of the land at the time his claims were located before the claims can be declared void ab initio for his failure to file amended locations as required to take advantage of the benefits of section 1 of the Multiple Mineral Development Act of August 13, 1954, 30 U.S.C. § 521 (1970).

Meritt N. Barton, 6 IBLA 293 (July 7, 1972) 79 I.D. 431-A

Where (1) an association placer mining claim embracing 80 acres was located for a common variety sand and gravel prior to July 23, 1955, (2) the sand and gravel was mined, removed and marketed at a profit from a portion of the claim before July 23, 1955, (3) a mineral patent has been issued for some of the 10-acre subdivisions of the claim, and (4) the mineral material deposits on the unpatented portion of the claim are similar in nature to the mineral found on the patented portion of the claim, which deposits had been mined, removed and marketed at a profit prior to July 23, 1955, and thereafter, it is error to hold such unpatented 10-acre subdivisions within the claim to be nonmineral in character and to reject a mineral patent application therefor.

Where mineral material on some 10-acre subdivisions within an association placer mining claim embracing 80 acres is not of as high a quality as the mineral which was being mined, removed and marketed at a profit on July 23, 1955, from now patented portions of the claim, it is proper to hold that such unpatented 10-acre subdivisions within the claim are nonmineral in character and to reject a mineral patent application therefor.

United States v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21 (July 26, 1972) 79 I.D. 457

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

Where in a proceeding under the section 5 of Surface Resources Act, 30 U.S.C. § 613 (1970), the Government has accepted a verified statement by a mining claimant alleging surface rights to the land within his claims, such acceptance being conditioned upon a stipulation which expressly provides that "nothing herein shall be construed as precluding the United States from contesting the validity of these claims by subsequent proceedings," and where no mention is made of the mineral character of the claims, no determination has been made by the Government that the land is mineral in character.

In order that land be considered mineral in character, as contemplated by the mining laws, the known conditions must be such as reasonably to engender the belief that the land contains mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end. It is not necessary to show that the land contains a valid mining claim; the character of land as mineral may be determined through geologic inference, by the presence of minerals in substantial quantities on adjacent lands, or by other external conditions.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

LEASES

Where the state director interprets the regulation which reserves to him the right to offer competitively a lease for any land applied for within the Lake Mead Recreation Area if, in his judgment, there is evidence of a competitive interest in the land, his decision that no lease would issue without competitive bidding will be affirmed if on appellate review it is found to be the conclusion which the Board would have reached independently.

Mark Systems, Inc., 5 IBLA 257 (Mar. 23, 1972)

In determining the gross value of mineral concentrates as a basis for computing royalties due to the United States under a mineral lease which permits the deduction of costs and charges of smelting and refining such concentrates, the Government will not allow as a deduction a smelter deficiency payment consisting of the difference between a minimum quarterly tolling charge for processing concentrates prescribed under a tolling agreement between the lessee and the refiner and the total of the tolling charges applicable to each ton of concentrates actually processed during a calendar quarter, as the tolling agreement was a unique and special arrangement outside of the normal and usual business practices and the smelter deficiency payment was not contemplated by the United States when it issued the lease.

Dresser Industries, Inc. 6 IBLA 195 (June 19, 1972)

MINERAL LANDS--Continued

LEASES--Continued

A hardrock preference-right lease application is properly rejected where the permittee does not demonstrate the existence of a workable deposit of the mineral for which the permit was issued within the term of the permit.

E. C. Beede, 7 IBLA 177 (Sept. 1, 1972)

Where applications for a mineral lease pursuant to the Act of October 8, 1964, 16 U.S.C. § 460(n) (1970), and alternatively, for the restoration of a portion of the same land from the first form of reclamation withdrawal to mineral entry and location pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1970), are both rejected on the basis of adverse recommendations by the Bureau of Reclamation, the decision will be affirmed where it appears that it was predicated upon a due regard for the public interest and constituted a proper exercise of discretionary authority.

George S. Miles, Sr., 7 IBLA 372 (Sept. 29, 1972)

A prospecting application, filed under the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), may be granted only where the lands are not known to contain valuable deposits of mineral. The determination whether a specific tract of land is subject to the issuance of a prospecting permit or of a mineral lease is committed to the Secretary. In making such a determination, the Secretary is entitled to rely upon advice furnished by his technical representative, the Director of the Geological Survey.

Lloyd K. Johnson, 8 IBLA 73 (Oct. 27, 1972)

PROSPECTING PERMITS

A prospecting permit for hard rock minerals will not be amended subsequent to a discovery and after the expiration of the permit so to include in a preference right lease lands which were not previously embraced within that permit.

Hanna Mining Company, 6 IBLA 281 (June 30, 1972)

A prospecting application, filed under the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), may be granted only where the lands are not known to contain valuable deposits of mineral. The determination whether a specific tract of land is subject to the issuance of a prospecting permit or of a mineral lease is committed to the Secretary. In making such a determination, the Secretary is entitled to rely upon advice furnished by his technical representative, the Director of the Geological Survey.

The rejection of an application for a prospecting permit for lands within the exterior boundaries of a national forest in Minnesota, filed pursuant to the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), is properly reversed where the Geological Survey, upon reconsideration, determines

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

that prospecting is needed to ascertain whether the land contains workable deposits of the minerals sought.

Lloyd K. Johnson, 8 IBLA 73 (Oct. 27, 1972)

MINERAL LEASING ACT

GENERALLY

Failure by an applicant to respond to a Bureau of Land Management State Office letter inquiring only whether the applicant is still interested in receiving a prospecting permit is not on adequate ground for rejection of the applicants' prospecting permit application.

Phyllis Colman and William J. Colman, 8 IBLA 444 (Dec. 27, 1972)

APPLICABILITY

Where there is no determination that bentonite is a silicate of sodium or any other mineral subject to the Mineral Leasing Act, as amended and supplemented (30 U.S.C. §§ 181-287), bentonite will not be made subject to that statute but continue to be subject to disposition under the statute to which it has hitherto been subject.

Applicability of the Mineral Leasing Act to Deposits of Bentonite, M-36866 (Nov. 7, 1972) 79 I.D. 642

LANDS SUBJECT TO

Lands constituting the bed or bank or within a quarter mile of a river which is listed as a potential addition to the national wild and scenic system are not withdrawn from mineral leasing but are subject to the Secretary's discretionary authority in issuance of leases and the Secretary may refuse to issue oil and gas leases where such lands have been inadvertently listed for leasing.

Signal Oil & Gas Co., 8 IBLA 14 (Oct. 5, 1972)

Lands constituting the bed or bank or within a quarter mile of the bank of a river which is listed as a potential addition to the national wild and scenic river system are not withdrawn from mineral leasing but are subject to the Secretary's discretionary authority in issuance of leases and the Secretary may refuse to issue oil and gas leases where such lands have been inadvertently listed for leasing.

Signal Oil & Gas Co., 8 IBLA 150 (Nov. 20, 1972)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

The subdivision of acquired lands of the United States into a rectangular system having aliquot parts similar to those employed in the public land surveys does not make the lands so designated "surveyed" within the ambit of the regulations under the Mineral Leasing Act for Acquired Lands when the plat of the survey has not been approved by the Director, Bureau of Land Management.

Arthur E. Meinhart, Irwin Rubenstein, Appellants, Bruce Anderson, Appellee, 6 IBLA 39 (May 12, 1972)

MINING CLAIMS
(See also Multiple Mineral Development Act, Surface Resources Act)

GENERALLY

A deposit of gypsite, composed of particles of gypsum mixed with impurities such as clay and silica, utilized in agriculture for the gypsum it contains by applying it to alkali soils as a soil conditioner is a locatable mineral under the mining laws.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

The provisions of Rev. Stat. sec. 2332, 30 U.S.C. § 38, do not provide an independent means of acquiring title to a mining claim and particularly do not dispense with the necessity of there being a valid discovery on the claim.

United States of America v. Charles W. Kohl and Cora A. Kohl, 5 IBLA 298 (Apr. 13, 1972)

Section 2322, Revised Statutes, 30 U.S.C. § 26 (1970), does not by its terms grant any right to the wife of the locator or a subsequent claimant either present or contingent in an unpatented mining claim.

United States v. Melvin McCormick, 5 IBLA 382 (Apr. 28, 1972) 79 I.D. 155

Where mining claims were located in 1933 upon lands which were reported to be valuable for Mineral Leasing Act minerals, and the classification is disputed by the mining claimant, the mining claims may not be declared void ab initio, but the validity of a mining claim will be determined by a contest proceeding.

Long Beach Salt Company, 6 IBLA 50 (May 17, 1972)

Common clays are not locatable under the mining laws. Only deposits of clay of an exceptional nature which can be marketed for uses for which ordinary clays cannot be used are subject to such location.

A mining claim for a type of bentonite clay, which has not been adequately shown to be of a quality and quantity which can be marketed profitably for commercial purposes for which common clays cannot be used, is not valid.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

A transferee of a mining claim declared void ab initio by a decision of the Bureau of Land Management has standing to appear before the Board of Land Appeals in an appeal proceeding from that decision.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

MINING CLAIMS--Continued

GENERALLY--Continued

Any mineral deposit subject to location under the Mining Law (30 U.S.C. secs. 21-54) will continue to be subject to disposition under that statute until that statute is amended or the deposit is made subject to disposition under some other statute. A determination that a mineral, previously locatable, is leasable will not affect the validity of claims located for that mineral when it was legally locatable.

Applicability of the Mineral Leasing Act to Deposits of Bentonite, M-36866 (Nov. 7, 1972) 79 I.D. 642

The provisions of Rev. Stat. § 2332, 30 U.S.C. § 38 (1970), do not dispense with the necessity of proving a valid discovery on a mining claim.

United States v. Curtis H. Springer, et al., 8 IBLA 123 (Nov. 14, 1972)

The issuance of a final certificate to a mining claim does not constitute a determination that land is mineral in character.

The issuance of a final certificate to a mining claim, or a determination of the status of the claim under section 5 of the Surface Resources Act, 30 U.S.C. § 613 (1970), does not preclude the Department from challenging the validity of the claim in a subsequent proceeding on any ground it may deem appropriate, since until the moment patent is issued the Department retains jurisdiction, after adequate notice and upon proper opportunity for hearing, to adjudicate the validity of mining claims on the public lands.

The prudent man test is not satisfied when a mining claimant asserts that she is willing to accept a meager income from the claims which, though inadequate to support a commercial mining venture, would, in her opinion, satisfy the needs of a small miner on a "do it yourself" basis. The test is objective, not subjective.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

ASSESSMENT WORK

The pendency of a contest charging that certain mining claims are null and void for lack of discovery and other grounds is not a sufficient basis, under 30 U.S.C. § 28b (1970), to grant a deferment of annual assessment work.

James R. Eck, 6 IBLA 263 (June 29, 1972)

A temporary deferment of annual assessment work on a mining claim will not be granted where, although the claimant alleges some legal difficulties involving the claim, he does not show that his right to enter upon the claim has been obstructed.

Richard L. Seltzer, 8 IBLA 105 (Nov. 7, 1972)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS

A deposit of building stone which is of widespread occurrence and used for decorative construction because it is found in a variety of colors and splits easily but does not command a higher price than that at which comparable deposits are sold does not have a special and unique value: therefore it is a common variety of stone not subject to mining location after July 23, 1955.

Mining claims located for a common variety of building stone are properly declared invalid for lack of discovery where the evidence shows that at most small quantities of stone may have been sold at so inconsequential a profit, if any, prior to July 23, 1955, that a prudent man would not have been justified in developing the claims prior to July 23, 1955.

The Atchison, Topeka & Santa Fe Railway Company v. Emma Mae Cox, United States of America v. Emma Mae Cox and M. D. Rawls and Edith Rawls, 4 IBLA 279 (Jan. 31, 1972)

To determine whether a deposit of building stone or other substance listed in the Act of July 23, 1955, is of a common or uncommon variety, there must be a comparison of the deposit with other deposits of similar type minerals in order to ascertain whether the deposit has a property giving it a distinct and special value. If the deposit is to be used for the same purposes as minerals of common occurrence, then there must be a showing that some property of the deposit gives it a special value for such use and that this value is generally reflected by the fact that the material commands a higher unit price in the market place. However, a showing that the stone or other mineral has some property making it useful for some purpose for which other commonly available materials cannot be used may also adequately demonstrate that it has a distinct and special value.

Where an applicant for a mineral patent filed to cover a claim for a tuffaceous building stone used for the same purposes as other building stone has not shown that the mineral located on the claim has a unique character such that when sold it commands a higher price on the open market than comparable materials the building stone does not have a special and distinct value and is a common variety of stone not locatable under the mining laws after July 23, 1955.

United States of America v. California Soylaid Products, Inc., 5 IBLA 179 (Mar. 15, 1972)

Generally

In order to satisfy the requirements for discovery of a mining claim located for common varieties of sand and gravel prior to July 23, 1955, it must be shown the materials could have been extracted, removed, and marketed at a profit prior to that date. Where a mining claimant fails to prove by a preponderance of the evidence that the materials from his claim could have been extracted, removed, and

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

marketed at a profit prior to that date, the claim is properly declared null and void for the lack of a timely discovery of a valuable mineral deposit.

United States v. Neil Stewart, 5 IBLA 39 (Feb. 28, 1972) 79 I.D. 27

A deposit of gypsite, composed of particles of gypsum mixed with impurities such as clay and silica, utilized in agriculture for the gypsum it contains by applying it to alkali soils as a soil conditioner is a locatable mineral under the mining laws.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

Dolomite which can only be used as aggregate in road construction, ground cover, leach lines and other purposes for which common varieties of sand, stone and gravel may be used must be considered a common variety under section 3 of the Act of July 23, 1955, unless it can be shown to have a unique property giving it a special and distinct value as reflected by a substantially higher commercial value for the dolomite than other materials used for the same purposes.

Although a deposit of dolomite may be considered an uncommon variety within section 3 of the Act of July 23, 1955, if suitable for metallurgical use, the prudent man test of Castle v. Womble, as complemented by the "marketability at a profit" test, must be satisfied to sustain a placer mining claim for the deposit.

If a deposit of dolomite is locatable under the mining laws only because it can be used for metallurgical and other uses for which common varieties of sand, stone, gravel, etc. cannot be used and has no property giving it a special and distinct value otherwise, the sales of the dolomite for purposes for which common varieties of materials can be used cannot be considered to establish the marketability at a profit and value of the deposit for the metallurgical and other uncommon variety uses.

United States v. Richard M. Lease, 6 IBLA 11 (May 10, 1972) 79 I.D. 379

Where (1) an association placer mining claim embracing 80 acres was located for a common variety sand and gravel prior to July 23, 1955, (2) the sand and gravel was mined, removed and marketed at a profit from a portion of the claim before July 23, 1955, (3) a mineral patent has been issued for some of the 10-acre subdivisions of the claim, and (4) the mineral material deposits on the unpatented portion of the claim are similar in nature to the mineral found on the patented portion of the claim, which deposits had been mined, removed and marketed at a profit prior to July 23, 1955, and thereafter, it is error to hold such unpatented 10-acre subdivisions within the claim to be nonmineral in character and to

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

reject a mineral patent application therefor.

Where mineral material on some 10-acre subdivisions within an association placer mining claim embracing 80 acres is not of as high a quality as the mineral which was being mined, removed and marketed at a profit on July 23, 1955, from now patented portions of the claim, it is proper to hold that such unpatented 10-acre subdivisions within the claim are nonmineral in character and to reject a mineral patent application therefor.

United States v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21 (July 26, 1972) 79 I.D. 457

To satisfy the requirements for discovery on a placer mining claim located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit as of that date. Where the evidence shows that there is an abundant supply of similar sand and gravel in the area of the claim, that sand and gravel was being produced and sold in the area on July 23, 1955, but that no sand and gravel had been or was being marketed from the claim as of that date, the fact that the material on the claim is similar both as to quantity and quality with the abundant supply of similar material found in the area is insufficient to show that material from this particular claim could have been profitably removed and marketed on or before July 23, 1955, and the claim is properly declared null and void.

United States v. The Dredge Corporation, 7 IBLA 136 (Aug. 25, 1972)

Common clays are not locatable under the mining laws. Only deposits of clay of an exceptional nature which can be marketed for uses for which ordinary clays cannot be used are subject to such location.

A mining claim for a type of bentonite clay, which has not been adequately shown to be of a quality and quantity which can be marketed profitably for commercial purposes for which common clays cannot be used, is not valid.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

The Board will uphold the conclusion of an Administrative Law Judge that where a placer mining claim, located after July 23, 1955, contains common varieties of sand, gravel, and clay and also deposits of metalliferous minerals including gold, silver, and mercury, the locatable minerals must support a discovery without consideration of the economic value of nonlocatable deposits.

Since Congress withdrew common varieties of sand and gravel from location under the mining laws by the Act of July 23, 1955, 30 U.S.C. § 611 (1970), it is incumbent

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

upon one who located a claim prior thereto to show that all the requirements for a discovery -- including that the materials could have been extracted, removed, and marketed at a profit -- had been met by that date.

United States v. Lloyd O'Callaghan, Sr. et al., 8 IBLA 324 (Dec. 8, 1972) 79 I.D. 689

To satisfy the requirements for discovery on a placer mining claim located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim, by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, could have been extracted, removed, and marketed at a profit as of that date.

United States v. Humboldt Placer Mining Company and Del De Rosier, 8 IBLA 407 (Dec. 20, 1972) 79 I.D. 709

The profitable marketability of uncommon varieties of stone within a mining claim located after the Surface Resources Act of July 23, 1955, must be established independently of sales of common varieties of stone within the claim.

United States v. Cascade Ornamental Building Stone, Inc., et al., 8 IBLA 447 (Dec. 29, 1972)

Special Value

Dolomite which can only be used as aggregate in road construction, ground cover, leach lines and other purposes for which common varieties of sand, stone and gravel may be used must be considered a common variety under section 3 of the Act of July 23, 1955, unless it can be shown to have a unique property giving it a special and distinct value as reflected by a substantially higher commercial value for the dolomite than other materials used for the same purposes.

United States v. Richard M. Lease, 6 IBLA 11 (May 10, 1972) 79 I.D. 379

Unique Property

The fact that a deposit of otherwise common sand and gravel may be located in an area where assertedly sand and gravel is scarce does not make it an "uncommon variety", since scarcity is not a unique property inherent in the deposit but is only an extrinsic factor.

United States v. Neil Stewart, 5 IBLA 39 (Feb. 28, 1972) 79 I.D. 27

A deposit of sand and gravel, without a unique property which gives it a special value, cannot be determined to be an uncommon variety solely on the basis of its location, even though the location gives the deposit an economic advantage due to its proximity to market.

United States v. Lloyd O'Callaghan, Sr. et al., 8 IBLA 324 (Dec. 8, 1972) 79 I.D. 689

MINING CLAIMS--Continued

CONTESTS

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee presents no direct or rebuttal evidence.

United States v. Delbert G. Oxford, Dorothy M. Oxford, 4 IBLA 236 (Jan. 10, 1972)

In a government mining contest, where the contestant had made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimant, and he cannot secure a determination that the claim is valid merely by attempting to discredit the government's witness.

Testimony by a government mineral examiner that he examined a mining claim and the workings thereon but found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the government of lack of discovery.

The fact that the complaint in a mining contest described the claim as being in the wrong range does not vitiate a decision holding the claim null and void where there was no confusion as to the land involved, the contestee and the mineral examiner had been on the claim together, and there is no showing of prejudice to the contestee.

United States v. L. B. McGuire, 4 IBLA 307 (Feb. 4, 1972)

Where the land occupied by mining claims is subsequently withdrawn from all forms of exploration, location and entry under the mining laws, evidence obtained thereafter by drilling, sampling and other exploratory activities cannot be considered for any purpose other than the extent to which such geological investigations may tend to support an assertion that valuable deposits of minerals had been physically disclosed within the boundaries of each of the claims prior to that date, i.e., the qualifying discovery must have been made prior to the date of the withdrawal.

United States v. Gunsight Mining Company, 5 IBLA 62 (Mar. 1, 1972)

To establish a prima facie case and to meet its burden of proof, in a mining contest, the government is not required to negate all the proofs of discovery. The government can meet its burden by competent testimony that there has been no discovery of a valuable mineral deposit.

Where the Government mineral examiner conducted his examination of contested claims under a misapprehension that the mineral deposit on the claims was not locatable, the case will be remanded so that a proper examination of the claims may be made.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

If upon review of the record of contest proceedings it is evident that stipulations of fact by the parties to the

MINING CLAIMS--Continued

CONTESTS--Continued

proceeding are insufficient to support the finding previously made that the mining claimants have satisfied the requirements of the mining laws and are entitled to a patent for the claims, a hearing will be ordered to receive and develop additional evidence on the issues in the contest complaint.

The Secretary of the Interior may inquire into all matters vital to the validity of mining claims at any time before the passage of legal title, and, where it is evident upon review of the record of contest proceedings that stipulations of fact by the parties are insufficient to support a finding previously made that the mining claimants have satisfied the requirements of the mining laws and are entitled to a patent for the claims, may order a hearing to receive and develop additional evidence on the issues in the contest complaint.

When parties to a mining contest request that the contest be determined solely on the basis of stipulated facts, the stipulated facts must be read as a whole and each fact interpreted with reference to the whole, and any final determination must be based upon the preponderance of the evidence.

United States v. Ideal Cement Co., Inc., 5 IBLA 235 (Mar. 23, 1972) 79 I.D. 117

Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestee and the claim is properly declared null and void by the land office manager under the Department's regulations governing such contests, which allow no exception for appellant's alleged reasons of mistake, inadvertence and excusable neglect.

United States v. Robert B. Sainberg, 5 IBLA 270 (Mar. 31, 1972)

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

United States of America v. Charles W. Kohl and Cora A. Kohl, 5 IBLA 298 (Apr. 13, 1972)

It is the duty of a mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners, and an examiner has no duty either to rehabilitate discovery points or to explore beyond the current workings of the mining claimant in an effort to verify a purported discovery.

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the claimant then has the burden of proof to show by a preponderance of the evidence that a discovery has been made.

MINING CLAIMS--Continued

CONTESTS--Continued

An assay report which is not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed cannot be given substantial evidential weight.

Where the Government's witness has a university degree in mining engineering and experience in examining property and determining the mineral values, he may be found to be an expert witness who is qualified to state his opinion with respect to whether a prudent man would undertake development of a mine on mining claims he has examined.

United States v. Ray Guthrie et al., 5 IBLA 303 (Apr. 14, 1972)

Under the Department rules governing government contests against mining claims, a contestee is required to answer within 30 days after he is served with a copy of the contest complaint, and where he fails timely to file an answer to the allegations of the complaint, they will be taken as admitted and the mining claim which is subject of the contest is properly declared null and void without a hearing where one of the charges in the complaint alleges no discovery of a valuable mineral deposit.

United States v. Melvin McCormick, 5 IBLA 382 (Apr. 28, 1972) 79 I.D. 155

In a Government contest against a mining claim where the Government has shown that the small market for dolomite useful for metallurgical purposes is being met by more competitive sources than the claim, the contestee then has the burden of proof to show by a preponderance of the evidence that the dolomite could be marketed at a profit for such purposes.

A mining claim for dolomite is properly declared null and void where it is concluded that there was not a sufficient market for metallurgical and other uncommon variety uses for the dolomite to justify the costs of mining the claim solely for such uses.

United States v. Richard M. Lease, 6 IBLA 11 (May 10, 1972) 79 I.D. 379

Where mining claims were located in 1933 upon lands which were reported to be valuable for Mineral Leasing Act minerals, and the classification is disputed by the mining claimant, the mining claims may not be declared void ab initio, but the validity of a mining claim will be determined by a contest proceeding.

Long Beach Salt Company, 6 IBLA 50 (May 17, 1972)

In a government mining contest, where the contestant made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimants.

United States of America v. Raymond Bass, Betty Yeck et al., 6 IBLA 113 (June 5, 1972)

MINING CLAIMS--Continued

CONTESTS--Continued

Determinations of invalidity of interests in mining claims are of no effect when the determinations were the result of contest proceedings wherein the complaints were not served on the holders of such interests.

United States Smelting Refining and Mining Company v. Tell Ertl, et al., 6 IBLA 253 (June 28, 1972)

The claimant does not meet his burden to establish the existence of a valuable mineral deposit by showing the claim to have been valuable in the past.

The Government has the initial burden of establishing a prima facie case that the claim is invalid. The contestee must then prove by a preponderance of the evidence that the claim is valid.

When determining the reasonability of developing a mining claim the prudence of the claimant is not at issue, and the "prudence" referred to in Castle v. Womble is not measured by the way in which he conserves his limited economic means.

United States v. Calla Mortenson, et al., 7 IBLA 123 (Aug. 21, 1972)

A claimant must show his mining claim is valuable for minerals at the time of a contest against the claim. Evidence of sales of minerals three decades ago does not establish the present existence of a discovery.

United States v. Anton M. Ozanich, Jr., and Jo Ann M. Ozanich, 7 IBLA 144 (Aug. 29, 1972)

A mining claimant has not been denied due process when his claims are contested assertedly because a permit has been granted to a museum to perform archaeological work under the Antiquities Act, and where there was some prehearing newspaper publicity that the contest was being instituted but the claimant does not show that there was any unfairness in the contest proceeding itself.

A mining contestee is the true proponent under the Administrative Procedure Act that his claim is valid and, therefore, has the burden of overcoming the the Government's prima facie case of no discovery with a preponderance of the evidence.

A statement made in a Bureau appeal decision which does not accurately reflect one evidentiary fact does not establish that the decision's other findings were erroneous, and this Board will sustain the Bureau's determination that mining claims are invalid where the entire record supports that conclusion.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

A determination of invalidity of interests in mining claims is effective where made as the result of contest proceedings wherein all the parties in interest were properly served and no appeal was taken.

Gabbs Exploration Company, United States Smelting Refining & Mining Company, 7 IBLA 318 (Sept. 25, 1972)

MINING CLAIMS--Continued

CONTESTS--Continued

The Government is not obligated to affirmatively prove that the land in a mining claim is nonmineral or that no discovery exists; if the Government's mineral examiner testifies that he examined a mining claim and found no evidence of a valuable mineral deposit, the Government has established a prima facie case of lack of discovery.

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the burden of proof then shifts to the mining claimants to show by a preponderance of the evidence that a discovery has been made.

United States v. Cecil R. Blomquist, Administrator of the Estate of Frank Blomquist, et al., 7 IBLA 351 (Sept. 28, 1972)

In a contest against the validity of a mining claim, the Government need only establish a prima facie case that no discovery of a valuable mineral deposit has been made within the limits of the claim; the burden of proof is then upon the claimant to show with a preponderance of the evidence that the requisite discovery has been made.

United States v. Joseph P. McKay (a/k/a Joseph P. McKay, Jr.), 8 IBLA 42 (Oct. 12, 1972)

When the government contests a mining claim, it has only the burden of going forward with sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. The Government is not obligated to prove affirmatively either that the land claimed is nonmineral in character or that no discovery of a valuable mineral deposit within the limits of a mining claim has been made, and the government's mineral examiners are under no obligation either to rehabilitate discovery points or to explore beyond the current workings of a mining claimant in attempting to verify a claimed discovery. Where a government mineral examiner testifies that he has sampled the exposed workings on a claim without finding sufficient mineral values and that he observed no other mineralization to sample, a prima facie case of no discovery has been made, and the burden is thereafter upon the mining claimant to show by a preponderance of the evidence a discovery has been made.

United States v. F. E. Gray and Mrs. F. E. Gray, 8 IBLA 96 (Nov. 6, 1972)

A mining claim is properly declared invalid where the government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

United States v. Curtis H. Springer, et al., 8 IBLA 123 (Nov. 14, 1972)

MINING CLAIMS--Continued

CONTESTS--Continued

In a government mining contest, where the contestant made a prima facie showing of a lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimants.

United States v. Benjamin L. Taylor and Martha L. Taylor, 8 IBLA 264 (Dec. 4, 1972)

A mining claim is properly declared null and void when contestee fails to answer timely a government contest complaint which charged that there had not been a discovery within the claim, and the complaint and regulation provide that failure to answer within 30 days will be taken as an admission of the allegations of the complaint.

United States v. Frank A. Spaulding and Wallace Spaulding, 8 IBLA 297 (Dec. 6, 1972)

It is the obligation of a mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners, and an examiner has no duty either to rehabilitate discovery points or to explore beyond the current workings of the mining claimant in an effort to verify a purported discovery.

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the claimant then has the burden of proof to show by a preponderance of the evidence that a discovery has been made.

An assay report which is not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed cannot be given substantial evidential weight.

United States v. George Avgeris, 8 IBLA 316 (Dec. 7, 1972)

Appellant's request for an opportunity to obtain new evidence for a further hearing in a mining claim contest will be denied where there has been no tender of proof which would tend to establish a valid discovery.

United States v. Lloyd O'Callaghan, Sr. et al., 8 IBLA 324 (Dec. 8, 1972) 79 I.D. 689

The Government may initiate a contest to determine the validity of mining claims. Its delay in bringing a contest after a mineral patent application has been filed cannot serve as a substitute for a discovery by the applicant necessary to validate a claim, nor does the applicant's holding the claims for many years prior to the filing of the application obviate the necessity of evidence of a discovery.

Failure of a mineral examiner to notify a claimant of a field examination is not

MINING CLAIMS--Continued

CONTESTS--Continued

a sufficient reason in a subsequent contest against mining claims to disqualify the Government's evidence of the examination and sampling, especially where the field examination was of sites previously identified in joint examinations conducted with the claimant.

United States v. E. Roy Grigg, 8 IBLA 331 (Dec. 8, 1972) 79 I.D. 682

The issuance of a final certificate to a mining claim, or a determination of the status of the claim under section 5 of the Surface Resources Act, 30 U.S.C. § 613 (1970), does not preclude the Department from challenging the validity of the claim in a subsequent proceeding on any ground it may deem appropriate, since until the moment patent is issued the Department retains jurisdiction, after adequate notice and upon proper opportunity for hearing, to adjudicate the validity of mining claims on the public lands.

The provisions of section 8(c) of the Administrative Procedure Act, 5 U.S.C. § 557(c) (1970), prescribing findings and conclusions on all "the material issues of fact, law, or discretion presented on the record," with "the appropriate rule, order, sanction, relief, or denial thereof," and the regulations governing contest proceedings involving mining claims, 43 CFR 4.425-8(b) (1972), do not require that an Administrative Law Judge make a ruling on a charge in a contest complaint that land is nonmineral in character, where he rules on another issue which is dispositive of the controversy.

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, claimant then has the burden of showing with a preponderance of the evidence that a discovery has been made.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

Government mineral examiners have no affirmative duty to search for indications of a discovery on a mining claim; nor do they have a duty to go beyond examining the discovery points of a claimant. Their function is to examine the discovery points made available by a claimant and to verify, if possible, the claimed discovery.

United States v. Humboldt Placer Mining Company and Del De Rosier, 8 IBLA 407 (Dec. 20, 1972) 79 I.D. 709

In a Government contest inquiring into the validity of mining claims, a finding of lack of discovery of a valuable mineral deposit determines that the claims are invalid, and an Administrative Law Judge errs after making such a finding in refusing to declare such claims to be invalid or null and void and in dismissing the Government's contest complaint.

United States v. Cascade Ornamental Building Stone, Inc., et al., 8 IBLA 447 (Dec. 29, 1972)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY

To constitute a discovery upon a placer mining claim there must be physically exposed within the limits of the claim minerals of such quality and quantity as to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee presents no direct or rebuttal evidence.

United States v. Delbert G. Oxford, Dorothy M. Oxford, 4 IBLA 236 (Jan. 10, 1972)

Mining claims located on land withdrawn from mineral entry are null and void ab initio.

Oliver and Robert A. Reese, Silver Associates, Inc., 4 IBLA 261 (Jan 21, 1972)

Government mineral examiners in determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case.

United States v. L. B. McGuire, 4 IBLA 307 (Feb. 4, 1972)

Where the land occupied by mining claims is subsequently withdrawn from all forms of exploration, location and entry under the mining laws, evidence obtained thereafter by drilling, sampling and other exploratory activities cannot be considered for any purpose other than the extent to which such geological investigations may tend to support an assertion that valuable deposits of minerals had been physically disclosed within the boundaries of each of the claims prior to that date, i.e., the qualifying discovery must have been made prior to the date of the withdrawal.

United States v. Gunsight Mining Company, 5 IBLA 62 (Mar. 1, 1972)

To establish a prima facie case and to meet its burden of proof, in a mining contest, the government is not required to negate all the proofs of discovery. The government can meet its burden by competent testimony that there has been no discovery of a valuable mineral deposit.

Where a mineral claimant has located a group of claims he must show a discovery on each claim, which requires a showing that the mineral from each claim could have been extracted, removed and marketed at a profit.

If it is shown as to a number of claims located for gypsite, and for which applications for patent have been filed, that the amount of deposits on the claims is excessively large in relation to the market that exists, only those claims can be found valid from which production would most feasibly meet

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

the market demand and have a reasonable prospect of success; the remaining claims must be held invalid for lack of discovery.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

To determine whether a deposit of building stone or other substance listed in the Act of July 23, 1955, is of a common or uncommon variety, there must be a comparison of the deposit with other deposits of similar type minerals in order to ascertain whether the deposit has a property giving it a distinct and special value. If the deposit is to be used for the same purposes as minerals of common occurrence, then there must be a showing that some property of the deposit gives it a special value for such use and that this value is generally reflected by the fact that the material commands a higher unit price in the market place. However, a showing that the stone or other mineral has some property making it useful for some purpose for which other commonly available materials cannot be used may also adequately demonstrate that it has a distinct and special value.

Where an applicant for a mineral patent filed to cover a claim for a tuffaceous building stone used for the same purposes as other building stone has not shown that the mineral located on the claim has a unique character such that when sold it commands a higher price on the open market than comparable materials the building stone does not have a special and distinct value and is a common variety of stone not locatable under the mining laws after July 23, 1955.

United States of America v. California Soylaid Products, Inc., 5 IBLA 179 (Mar. 15, 1972)

If upon review of the record of contest proceedings it is evident that stipulations of fact by the parties to the proceeding are insufficient to support the finding previously made that the mining claimants have satisfied the requirements of the mining laws and are entitled to a patent for the claims, a hearing will be ordered to receive and develop additional evidence on the issues in the contest complaint.

The Secretary of the Interior may inquire into all matters vital to the validity of mining claims at any time before the passage of legal title, and, where it is evident upon review of the record of contest proceedings that stipulations of fact by the parties are insufficient to support a finding previously made that the mining claimants have satisfied the requirements of the mining laws and are entitled to a patent for the claims, may order a hearing to receive and develop additional evidence on the issues in the contest complaint.

United States v. Ideal Cement Co., Inc., 5 IBLA 235 (Mar. 23, 1972) 79 I.D. 117

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

To constitute a discovery upon a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

United States of America v. Charles W. Kohl and Cora A. Kohl, 5 IBLA 298 (Apr. 13, 1972)

The rejection of an application for patent to a mining claim in a contest proceeding on the ground that a discovery has not been made is necessarily a determination that the claim is invalid.

United States v. William J. Bartels, Sr., et al., 6 IBLA 124 (June 5, 1972)

Where a hearing examiner has declared a mining claim to be null and void for lack of discovery, and the mining claimant makes no attempt to show error in that particular finding, the hearing examiner's decision will not be disturbed.

United States v. Lewis Maus and Frank G. Morrison, 6 IBLA 164 (June 14, 1972)

Determinations of invalidity of interests in mining claims are of no effect when the determinations were the result of contest proceedings wherein the complaints were not served on the holders of such interests.

United States Smelting Refining and Mining Company v. Tell Ertl, et al., 6 IBLA 253 (June 28, 1972)

Where there were no outstanding permits, leases or applications for leases for minerals subject to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), when mining claims were located in 1945 and 1952, but the Geological Survey in 1968 has reported that the lands were known to be valuable for leasable minerals subject to that Act since 1920, a mining claimant is entitled to a hearing on the question of the known mineral character of the land at the time his claims were located before the claims can be declared void ab initio for his failure to file amended locations as required to take advantage of the benefits of section 1 of the Multiple Mineral Development Act of August 13, 1954, 30 U.S.C. § 521 (1970).

Section 2332, Rev. Stat., 30 U.S.C. § 38 (1970), does not obviate the necessity of a mining claimant to show a valid discovery in order to be entitled to a patent for a mining claim.

Section 2332, Rev. Stat., 30 U.S.C. § 38 (1970), may not create any rights to a mining claim against the United States where the land is not open to entry under the mining laws. If, however, the land becomes

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

open for entry under the mining laws, and in the absence of any intervening rights, that provision may serve as a substitute to making a new location if the lands are held for the requisite number of years thereafter and a discovery of a valuable mineral deposit is then shown. This includes lands opened to mining claims under the Multiple Mineral Development Act, but under that Act the leasable minerals would be reserved to the United States.

Meritt N. Barton, 6 IBLA 293 (July 7, 1972) 79 I.D. 431-A

Mining claims located on lands after they have been included in an application for withdrawal, which was noted on the records of the land office, are properly declared null and void ab initio.

M. A. McHenry, C. D. McHenry, A. H. Haile, Betty J. McHenry, 7 IBLA 77 (Aug. 15, 1972)

No hearing is necessary to declare mining claims void ab initio where the records of the Department show that at the time of location of the claims the land was not open to mining location.

Ramsher Mining and Engineering Co., Inc., 7 IBLA 172 (Sept. 1, 1972)

A determination of invalidity of interests in mining claims is effective where made as the result of contest proceedings wherein all the parties in interest were properly served and no appeal was taken.

Gabbs Exploration Company, United States Smelting Refining & Mining Company, 7 IBLA 318 (Sept. 25, 1972)

The Bureau of Land Management, without holding an evidentiary hearing, may properly declare that mining claims were null and void ab initio when they were located while land was within a power site withdrawal and no rights therein could be based upon the original locations. However, such a finding does not determine the validity of claims located after the lands were opened to mineral location by the Mining Claims Rights Restoration Act or held thereafter for the period prescribed by 30 U.S.C. § 38 (1970).

Gardner C. McFarland, 8 IBLA 56 (Oct. 13, 1972)

Although a mining claim may have been valid in the past because of a discovery on the claim of a valuable deposit of mineral, the mining claim will lose its validity if the mineral deposit ceases to be valuable because of a change in economic conditions or exhaustion of the deposit.

United States v. F. E. Gray and Mrs. F. E. Gray, 8 IBLA 96 (Nov. 6, 1972)

A mining claim is properly declared invalid where the government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

of evidence that the claim is valid.

United States v. Curtis H. Springer, et al., 8 IBLA 123 (Nov. 14, 1972)

Where mineral values ascertained on a lode mining claim would not justify a prudent man in going forward with developmental endeavors with a reasonable prospect of success in obtaining a valuable mine, it is proper to declare the claim null and void.

United States v. Benjamin L. Taylor and Martha L. Taylor, 8 IBLA 264 (Dec. 4, 1972)

The issuance of a final certificate to a mining claim, or a determination of the status of the claim under section 5 of the Surface Resources Act, 30 U.S.C. § 613 (1970), does not preclude the Department from challenging the validity of the claim in a subsequent proceeding on any ground it may deem appropriate, since until the moment patent is issued the Department retains jurisdiction, after adequate notice and upon proper opportunity for hearing, to adjudicate the validity of mining claims on the public lands.

The prudent man test is not satisfied when a mining claimant asserts that she is willing to accept a meager income from the claims which, though inadequate to support a commercial mining venture, would, in her opinion, satisfy the needs of a small miner on a "do it yourself" basis. The test is objective, not subjective.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

No hearing is necessary to declare mining claims void ab initio where the records of the Department show that at the time of location of the claim the land was not open to such location.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

In a Government contest inquiring into the validity of mining claims, a finding of lack of discovery of a valuable mineral deposit determines that the claims are invalid, and an Administrative Law Judge errs after making such a finding in refusing to declare such claims to be invalid or null and void and in dismissing the Government's contest complaint.

United States v. Cascade Ornamental Building Stone, Inc., et al., 8 IBLA 447 (Dec. 29, 1972)

DISCOVERY

Mining claims located for a common variety of building stone are properly declared invalid for lack of discovery where the evidence shows that at most small quantities of stone may have been sold at so inconsequential a profit, if any, prior to July 23, 1955, that a prudent man would not have been justified in developing the claims prior to July 23, 1955.

The Atchison, Topeka & Santa Fe Railway Company v. Emma Mae Cox, United States of America v. Emma Mae Cox and M. D. Rawls and Edith Rawls, 4 IBLA 279 (Jan. 31, 1972)

The provisions of Rev. Stat. sec. 2332, 30 U.S.C. § 38, do not provide an independent means of acquiring title to a mining claim and particularly do not dispense with the necessity of there being a valid discovery on the claim.

United States of America v. Charles W. Kohl and Cora A. Kohl, 5 IBLA 298 (Apr. 13, 1972)

Generally

To constitute a discovery upon a placer mining claim there must be physically exposed within the limits of the claim minerals of such quality and quantity as to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence of mineralization sufficient only to warrant further exploration is insufficient to establish discovery of a valuable mineral deposit under the mining laws.

United States v. Delbert G. Oxford, Dorothy M. Oxford, 4 IBLA 236 (Jan. 10, 1972)

In a government mining contest, where the contestant had made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimant, and he cannot secure a determination that the claim is valid merely by attempting to discredit the government's witness.

Government mineral examiners in determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case.

To constitute a valid discovery upon a lode mining claim there must be exposed within the limits of the claim a lode or vein bearing mineral in such quality and quantity which would warrant a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

United States v. L. B. McGuire, 4 IBLA 307 (Feb. 4, 1972)

Where the mineral of primary interest (fluorite) cannot be mined profitably alone or in association with other locatable minerals, although the presence of such minerals is indicated, a qualifying discovery of a valuable mineral deposit has not been effected.

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

The finding of a mineralized area on which the hope for the development of a valuable mine relies to a disproportionate degree on the chance of encountering ore bodies as yet unknown cannot be regarded as an endeavor in which a prudent man would be justified in investing with a reasonable expectation of success in the development of a paying mine, and therefore it cannot qualify as a discovery of a valuable mineral deposit within the meaning of the mining law, even though a prudent man might be justified in spending his labor and means in further prospecting.

United States v. Gunsight Mining Company, 5 IBLA 62 (Mar. 1, 1972)

To prove that a discovery of a valuable mineral deposit has been made under the mining laws it is not necessary to show there is an actual profitable mining operation in existence; instead there must be evidence of the quantity and quality of the mineral deposit within the claim which under known marketing conditions could be sold at a price which would justify reasonably expected costs of a mining operation so that a prudent man would expect to develop a valuable mine.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

To constitute a valid discovery upon a placer mining claim located for deposits of tuff, there must be a discovery on the claim of such tuffaceous deposit as would warrant a prudent man in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

Where an applicant for a mineral patent filed to cover a claim for a tuffaceous building stone used for the same purposes as other building stone has not shown that the mineral located on the claim has a unique character such that when sold it commands a higher price on the open market than comparable materials the building stone does not have a special and distinct value and is a common variety of stone not locatable under the mining laws after July 23, 1955.

United States of America v. California Soylaid Products, Inc., 5 IBLA 179 (Mar. 15, 1972)

To constitute a discovery upon a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence of mineralization sufficient only to warrant further exploration in the hope of finding a valuable deposit is insufficient

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

to establish discovery of a valuable mineral deposit under the mining laws.

United States of America v. Charles W. Kohl and Cora A. Kohl, 5 IBLA 298 (Apr. 13, 1972)

To constitute a valid discovery upon a mining claim there must be shown to exist, within the limits of the claim, a deposit of minerals in such quantity and quality as would warrant a prudent man to expend his labor and means with a reasonable prospect of success in developing a valuable mine; the fact that gold may have been found on property belonging to claimant's neighbor and the fact that the claim may have been mined successfully in the past are not sufficient to constitute discovery.

It is the duty of a mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners, and an examiner has no duty either to rehabilitate discovery points or to explore beyond the current workings of the mining claimant in an effort to verify a purported discovery.

United States v. Ray Guthrie et al., 5 IBLA 303 (Apr. 14, 1972)

A mining claim for dolomite is properly declared null and void where it is concluded that there was not a sufficient market for metallurgical and other uncommon variety uses for the dolomite to justify the costs of mining the claim solely for such uses.

United States v. Richard M. Lease, 6 IBLA 11 (May 10, 1972) 79 I.D. 379

To constitute a discovery upon a lode mining claim there must be a discovery on the claim of a lode or vein bearing mineral which would justify a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is only a showing which would warrant further exploration in the hope of finding a valuable mineral deposit.

Geologic inference may be relied upon to establish the extent and potential value of a particular mineral deposit but it may not be relied upon, as a substitute for the actual finding of a mineral deposit, to establish the existence of the deposit within the limits of a designated mining claim; and, where a vein carrying some erratic values in mineralization has been exposed within the limits of a mining claim, but the exposed mineralization does not constitute a mineral deposit capable of development and the existence of such a deposit in the vein within the limits of the claim can only be inferred, a discovery, within the meaning of the mining laws, has not been shown and an application for patent is properly rejected and the claim declared null and void.

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

The rejection of an application for patent to a mining claim in a contest proceeding on the ground that a discovery has not been made is necessarily a determination that the claim is invalid.

United States v. William J. Bartels, Sr., et al., 6 IBLA 124 (June 5, 1972)

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery and is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case.

Testimony by a government mineral examiner that he examined a mining claim and the workings thereon, but found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the Government of lack of discovery.

In a government mining contest, where the contestant made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimants.

Where the value of the gold disclosed exclusively by fire assay could only be recovered through smelting and the cost of the smelting, together with mining and sluicing costs, would exceed the value of the gold recovered, there has not been a valid discovery within the meaning of the mining laws. 30 U.S.C. §§ 22, 35 (1970).

United States of America v. Raymond Bass, Betty Yeck, et al., 6 IBLA 113 (June 5, 1972)

A single discovery of a valuable mineral deposit is sufficient to validate an association placer mining claim embracing 80 acres, and each 10-acre subdivision within the claim is properly determined to be mineral in character where the mineral material present is of a homogeneous nature throughout the entire 80 acre claim.

United States v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21 (July 26, 1972) 79 I.D. 457

The Government has no duty to excavate for the mineral or to rehabilitate the claimants' discovery points.

The claimant does not meet his burden to establish the existence of a valuable mineral deposit by showing the claim to have been valuable in the past.

United States v. Calla Mortenson, et al., 7 IBLA 123 (Aug. 21, 1972)

A claimant must show his mining claim is valuable for minerals at the time of a contest against the claim. Evidence of sales of minerals three decades ago does not establish the present existence of a discovery.

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Evidence of mineralization, which is only sufficient to warrant further exploration, does not establish a discovery of a valuable mineral deposit within the ambit of the United States mining laws.

United States v. Anton M. Ozanich, Jr., and Jo Ann M. Ozanich, 7 IBLA 144 (Aug. 29, 1972)

To constitute a discovery upon a lode mining claim there must be a lode or vein bearing mineral which would justify a prudent man in the expenditure of his time and money, with a reasonable prospect of success of developing a valuable mine: it is not sufficient that there is only a showing which would warrant further prospecting or exploration in an attempt to ascertain whether the property might warrant development.

United States, Contestant v. John C. Hughes, Contestee, 7 IBLA 185 (Sept. 7, 1972)

A mining contestee is the true proponent under the Administrative Procedure Act that his claim is valid and, therefore, has the burden of overcoming the Government's prima facie case of no discovery with a preponderance of the evidence.

Common clays are not locatable under the mining laws. Only deposits of clay of an exceptional nature which can be marketed for uses for which ordinary clays cannot be used are subject to such location.

A mining claim for a type of bentonite clay, which has not been adequately shown to be of a quality and quantity which can be marketed profitably for commercial purposes for which common clays cannot be used, is not valid.

Evidence of mineralization which might warrant further exploration work within a claim rather than development of a mine is not sufficient to constitute a discovery of a valuable mineral deposit.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

The Government is not obligated to affirmatively prove that the land in a mining claim is nonmineral or that no discovery exists; if the Government's mineral examiner testifies that he examined a mining claim and found no evidence of a valuable mineral deposit, the Government has established a prima facie case of lack of discovery.

United States v. Cecil R. Blomquist, Administrator of the Estate of Frank Blomquist, et al., 7 IBLA 351 (Sept. 28, 1972)

To constitute a discovery of a valuable mineral deposit within a mining claim there must be a showing of sufficient mineralization to justify a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence of mineralization which might warrant further exploration work within a claim rather than development

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

of a mine is not sufficient to constitute a discovery of a valuable mineral deposit.

United States v. Joseph P. McKay (a/k/a Joseph P. McKay, Jr.), 8 IBLA 42 (Oct. 12, 1972)

When the government contests a mining claim, it has only the burden of going forward with sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. The Government is not obligated to prove affirmatively either that the land claimed is nonmineral in character or that no discovery of a valuable mineral deposit within the limits of a mining claim has been made, and the government's mineral examiners are under no obligation either to rehabilitate discovery points or to explore beyond the current workings of a mining claimant in attempting to verify a claimed discovery. Where a government mineral examiner testifies that he has sampled the exposed workings on a claim without finding sufficient mineral values and that he observed no other mineralization to sample, a prima facie case of no discovery has been made, and the burden is thereafter upon the mining claimant to show by a preponderance of the evidence a discovery has been made.

The Department has repeatedly held that in order to constitute a discovery upon a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing mineral of such quality and of such quantity as to warrant a prudent man in the expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine and that it is not sufficient that the exposed mineralization merely give rise to a hope or expectation that upon further exploration a valuable mineral deposit may be found.

Although a mining claim may have been valid in the past because of a discovery on the claim of a valuable deposit of mineral, the mining claim will lose its validity if the mineral deposit ceases to be valuable because of a change in economic conditions or exhaustion of the deposit.

United States v. F. E. Gray and Mrs. F. E. Gray, 8 IBLA 96 (Nov. 6, 1972)

To constitute a valid discovery there must be shown to exist within the limits of the mining claim a valuable mineral deposit, which is subject to location under the mining laws and which would warrant a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success in developing a paying mine.

The provisions of Rev. Stat. § 2332, 30 U.S.C. § 38 (1970), do not dispense with the necessity of proving a valid discovery on a mining claim.

United States v. Curtis H. Springer, et al., 8 IBLA 123 (Nov. 14, 1972)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Testimony by a government mineral examiner that he examined a mining claim and the workings thereon but found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the Government of a lack of discovery.

In a government mining contest, where the contestant made a prima facie showing of a lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimants.

Where mineral values ascertained on a lode mining claim would not justify a prudent man in going forward with developmental endeavors with a reasonable prospect of success in obtaining a valuable mine, it is proper to declare the claim null and void.

United States v. Benjamin L. Taylor and Martha L. Taylor, 8 IBLA 264 (Dec. 4, 1972)

To constitute a discovery upon a mining claim there must be shown to exist, within the limits of the claim, a deposit of minerals in such quantity and quality as would warrant a prudent man to expend his labor and means with a reasonable prospect of success in developing a valuable mine; the facts that gold may have been found on adjacent property and that the claim may have been mined successfully in the past are not sufficient to constitute discovery.

It is the obligation of a mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners, and an examiner has no duty either to rehabilitate discovery points or to explore beyond the current workings of the mining claimant in an effort to verify a purported discovery.

United States v. George Avgeris, 8 IBLA 316 (Dec. 7, 1972)

The Board will uphold the conclusion of an Administrative Law Judge that where a placer mining claim, located after July 23, 1955, contains common varieties of sand, gravel, and clay and also deposits of metalliferous minerals including gold, silver, and mercury, the locatable minerals must support a discovery without consideration of the economic value of nonlocatable deposits.

A clay deposit is not locatable under the mining laws, though sold for use as an additive in cattle feed, where it is not shown that the clay possesses characteristics which give it an unusual value distinguishing it from common clays.

United States v. Lloyd O'Callaghan, Sr. et al., 8 IBLA 324 (Dec. 8, 1972) 79 I.D. 689

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

The Government may initiate a contest to determine the validity of mining claims. Its delay in bringing a contest after a mineral patent application has been filed cannot serve as a substitute for a discovery by the applicant necessary to validate a claim, nor does the applicant's holding the claims for many years prior to the filing of the application obviate the necessity of evidence of a discovery.

The requirement of a discovery of a valuable mineral deposit is not met by geological inference, the "intrinsic value" of the minerals sampled, proximity to patented claims, or delay in contesting the claims; instead, there must be a showing of sufficient mineral so that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

To verify whether a discovery of a valuable mineral deposit has been made, Government mineral examiners need not explore or sample beyond those areas which have been exposed by the claimant; they do not do the discovery work for the claimant and do not need to drill to prove or disprove the existence of minerals at depth where the claimant has not done so.

Inability of a mining claimant to make the necessary capital investment to establish the existence of a discovery of a valuable mineral deposit is not an excuse or substitute for failure of the claimant to prove the existence of the deposit in order to be entitled to a patent for a mining claim.

United States v. E. Roy Grigg, 8 IBLA 331
(Dec. 8, 1972) 79 I.D. 682

The prudent man test is not satisfied when a mining claimant asserts that she is willing to accept a meager income from the claims which, though inadequate to support a commercial mining venture, would, in her opinion, satisfy the needs of a small miner on a "do it yourself" basis. The test is objective, not subjective.

United States v. Nettie G. Harper,
8 IBLA 357 (Dec. 12, 1972)

To constitute a valid discovery upon lode mining claims there must be a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Rose and Lloyd Backeberg, 8 IBLA 382
(Dec. 19, 1972)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Government mineral examiners have no affirmative duty to search for indications of a discovery on a mining claim; nor do they have a duty to go beyond examining the discovery points of a claimant. Their function is to examine the discovery points made available by a claimant and to verify, if possible, the claimed discovery.

United States v. Humboldt Placer Mining Company and Del De Rosier, 8 IBLA 407
(Dec. 20, 1972) 79 I.D. 709

Geologic Inference

Geologic inference may be relied upon to establish the extent and potential value of a particular deposit, but it may not be relied upon as a substitute for the actual exposure of a mineral deposit, and where a vein carrying some erratic mineral values has been exposed but does not disclose a mineral deposit capable of development, and where the existence of such a deposit can only be inferred, a discovery has not been shown.

United States v. Gunsight Mining Company,
5 IBLA 62 (Mar. 1, 1972)

To constitute a discovery upon a lode mining claim there must be a discovery on the claim of a lode or vein bearing mineral which would justify a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is only a showing which would warrant further exploration in the hope of finding a valuable mineral deposit.

Geologic inference may be relied upon to establish the extent and potential value of a particular mineral deposit but it may not be relied upon, as a substitute for the actual finding of a mineral deposit, to establish the existence of the deposit within the limits of a designated mining claim; and, where a vein carrying some erratic values in mineralization has been exposed within the limits of a mining claim, but the exposed mineralization does not constitute a mineral deposit capable of development and the existence of such a deposit in the vein within the limits of the claim can only be inferred, a discovery, within the meaning of the mining laws, has not been shown and an application for patent is properly rejected and the claim declared null and void.

United States v. William J. Bartels, Sr., et al.,
6 IBLA 124 (June 5, 1972)

The requirement of a discovery of a valuable mineral deposit is not met by geological inference, the "intrinsic value" of the minerals sampled, proximity to patented claims, or delay in contesting the claims; instead, there must be a showing of sufficient mineral so that a person of ordinary prudence would be justified in the

MINING CLAIMS--Continued

DISCOVERY--Continued

Geologic Inference--Continued

further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

United States v. E. Roy Grigg, 8 IBLA 331 (Dec. 8, 1972) 79 I.D. 682

Marketability

The Government may raise a presumption that the material on the claim could not be extracted and marketed at a profit by introducing evidence that claimant has done nothing toward the development of the claim.

In order to satisfy the requirements for discovery of a mining claim located for common varieties of sand and gravel prior to July 23, 1955, it must be shown the materials could have been extracted, removed, and marketed at a profit prior to that date. Where a mining claimant fails to prove by a preponderance of the evidence that the materials from his claim could have been extracted, removed, and marketed at a profit prior to that date, the claim is properly declared null and void for the lack of a timely discovery of a valuable mineral deposit.

The holding of a mining claim as a reserve for a prospective market does not impart validity to the claim.

United States v. Neil Stewart, 5 IBLA 39 (Feb. 28, 1972) 79 I.D. 27

If it is shown as to a number of claims located for gypsite, and for which applications for patent have been filed, that the amount of deposits on the claims is excessively large in relation to the market that exists, only those claims can be found valid from which production would most feasibly meet the market demand and have a reasonable prospect of success; the remaining claims must be held invalid for lack of discovery.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

In order to satisfy the requirements of a discovery on a placer mining claim located for a deposit of a tuffaceous mineral, it must be shown that the deposit can be extracted, removed and marketed at a profit.

United States of America v. California Soylaid Products, Inc., 5 IBLA 179 (Mar. 15, 1972)

Although a deposit of dolomite may be considered an uncommon variety within section 3 of the Act of July 23, 1955, if suitable for metallurgical use, the prudent man test of Castle v. Womble, as complemented by the "marketability at a profit" test, must be satisfied to sustain a placer mining claim for the deposit.

If a deposit of dolomite is locatable under the mining laws only because it can be used for metallurgical and other uses for

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

which common varieties of sand, stone, gravel, etc. cannot be used and has no property giving it a special and distinct value otherwise, the sales of the dolomite for purposes for which common varieties of materials can be used cannot be considered to establish the marketability at a profit and value of the deposit for the metallurgical and other uncommon variety uses.

In a Government contest against a mining claim where the Government has shown that the small market for dolomite useful for metallurgical purposes is being met by more competitive sources than the claim, the contestee then has the burden of proof to show by a preponderance of the evidence that the dolomite could be marketed at a profit for such purposes.

United States v. Richard M. Lease, 6 IBLA 11 (May 10, 1972) 79 I.D. 379

To satisfy the requirements for discovery on a placer mining claim located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit as of that date. Where the evidence shows that there is an abundant supply of similar sand and gravel in the area of the claim, that sand and gravel was being produced and sold in the area on July 23, 1955, but that no sand and gravel had been or was being marketed from the claim as of that date, the fact that the material on the claim is similar both as to quantity and quality with the abundant supply of similar material found in the area is insufficient to show that material from this particular claim could have been profitably removed and marketed on or before July 23, 1955, and the claim is properly declared null and void.

To hold that a mining claim located for a common variety of sand and gravel prior to July 23, 1955, must be perfected by a discovery (including marketability) made before that date is not to give retrospective application to the Act of July 23, 1955, which bars locations thereafter made for common varieties of sand and gravel.

United States v. The Dredge Corporation, 7 IBLA 136 (Aug. 25, 1972)

The marketability test, as developed by this Department and approved by the courts, is a complement to the prudent man test of discovery of a valuable mineral deposit under the mining laws, and publication of the test in the Federal Register is not a prerequisite to its validity.

The marketability test of discovery of a valuable mineral deposit under the mining laws does not violate due process of law as being unconstitutionally vague, or as being unlawful administrative legislation.

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

The marketability test of discovery is not satisfied by speculation that there might be a market at some future date.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

Since Congress withdrew common varieties of sand and gravel from location under the mining laws by the Act of July 23, 1955, 30 U.S.C. § 611 (1970), it is incumbent upon one who located a claim prior thereto to show that all the requirements for a discovery -- including that the materials could have been extracted, removed, and marketed at a profit -- had been met by that date.

The fact that nothing is done toward the development of a mining claim after its location may raise a presumption that the market value of the minerals found therein was not sufficient to justify the expenditure required to extract and market them.

The holding of a mining claim as a reserve of sand and gravel for future development without present marketability does not impart validity to the claim.

United States v. Lloyd O'Callaghan, Sr. et al., 8 IBLA 324 (Dec. 8, 1972) 79 I.D. 689

The test of marketability, i.e., whether the minerals for which discovery is claimed are present in such quantity and are of such quality that they can be extracted, removed, and marketed at a profit, applies also to minerals of intrinsic value. A locator need not produce proof positive that the deposit on his claim could support a profitable mining operation, but the nucleus of value which sustains a discovery must be such that with actual mining operations under proper management a profitable venture may reasonably be expected to result.

The prudent man test is not satisfied when a mining claimant asserts that she is willing to accept a meager income from the claims which, though inadequate to support a commercial mining venture, would, in her opinion, satisfy the needs of a small miner on a "do it yourself" basis. The test is objective, not subjective.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

To satisfy the requirements for discovery on a placer mining claim located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim, by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, could have been extracted, removed, and marketed at a profit as of that date.

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

The Government may raise a presumption that the material on mining claims could not be extracted and marketed at a profit by introducing evidence that the claimant has done nothing to develop the claim.

United States v. Humboldt Placer Mining Company and Del De Rosier, 8 IBLA 407 (Dec. 20, 1972) 79 I.D. 709

Mere speculation that a market for stone may be developed does not satisfy the prudent man-marketability test of discovery of a valuable mineral deposit.

The profitable marketability of uncommon varieties of stone within a mining claim located after the Surface Resources Act of July 23, 1955, must be established independently of sales of common varieties of stone within the claim.

A contention that lack of title to mining claims prevents production and sales of stone from the claims does not relieve a claimant of his burden of showing evidence more reliable than mere statements of proposed operations and proposed marketing efforts to establish that stone can be marketed profitably from the mining claims.

United States v. Cascade Ornamental Building Stone, Inc., et al., 8 IBLA 447 (Dec. 29, 1972)

HEARINGS

Where the mineral claimant asserts that his claim is not located on land withdrawn from entry under the mining laws, and the record indicates that part of the claim is not on withdrawn land, the claim cannot be declared null and void ab initio for having been located on land withdrawn from mineral entry without a hearing to determine the facts.

Wesley Laubscher, 4 IBLA 246 (Jan. 12, 1972)

A stipulation by a field solicitor at a hearing that the statutory requisites for the grant of a patent have been met does not preclude consideration in a further proceeding of any question vital to the determination of whether the requirements of the law have been met.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

Where the Government's witness has a university degree in mining engineering and experience in examining property and determining the mineral values, he may be found to be an expert witness who is qualified to state his opinion with respect to whether a prudent man would undertake development of a mine on mining claims he has examined.

United States v. Ray Guthrie, et al., 5 IBLA 303 (Apr. 14, 1972)

MINING CLAIMS--Continued

HEARINGS--Continued

In a mining contest hearing relating to lands within a national forest, the Office of the General Counsel, Department of Agriculture, may properly appear in behalf of the Government pursuant to agreement between the Director, Bureau of Land Management and the Chief, Forest Service.

United States of America v. Raymond Bass, Betty Yeck, et al., 6 IBLA 113 (June 5, 1972)

Where there were no outstanding permits, leases or applications for leases for minerals subject to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), when mining claims were located in 1945 and 1952, but the Geological Survey in 1968 has reported that the lands were known to be valuable for leasable minerals subject to that Act since 1920, a mining claimant is entitled to a hearing on the question of the known mineral character of the land at the time his claims were located before the claims can be declared void ab initio for his failure to file amended locations as required to take advantage of the benefits of section 1 of the Multiple Mineral Development Act of August 13, 1954, 30 U.S.C. § 521 (1970).

Meritt N. Barton, 6 IBLA 293 (July 7, 1972)
79 I.D. 431-A

Under the Administrative Procedure Act the record made at a hearing constitutes the exclusive record for decision except to the extent official notice of facts may be taken. Further evidence presented on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision, but may only be considered to determine if there should be a further hearing.

United States v. Glen S. Gunn, et al., 7 IBLA 237
(Sept. 15, 1972) 79 I.D. 588

In a Departmental proceeding to determine the validity of a mining claim, an evidentiary hearing under the Administrative Procedure Act is required only if there is a disputed determinative question of fact; where the validity of a claim turns on the legal effect to be given to facts of record determining the status of the land when the claim was located no hearing is required.

Under the Mining Claims Rights Restoration Act of 1955, public land within a preliminary permit issued by the Federal Power Commission under the Federal Power Act is not open to entry under the mining laws; a mining claim located after the permit has issued is properly declared void ab initio without a hearing.

Foster Mining and Engineering Company, 7 IBLA 299
(Sept. 22, 1972) 79 I.D. 599

The Bureau of Land Management, without holding an evidentiary hearing, may properly declare that mining claims were null and void ab initio when they were located while land was within a power site withdrawal and no rights therein could be based upon the

MINING CLAIMS--Continued

HEARINGS--Continued

original locations. However, such a finding does not determine the validity of claims located after the lands were opened to mineral location by the Mining Claims Rights Restoration Act or held thereafter for the period prescribed by 30 U.S.C. § 38 (1970).

Gardner C. McFarland, 8 IBLA 56 (Oct. 13, 1972)

Only mining claimants who file the verified statement required by section 5(a) of the Act of July 23, 1955, are entitled to a notice of a hearing to determine rights to the surface resources of a mining claim.

Allegations that a mining claimant could not appear at a hearing because of illness or prepare the claim for sampling because the Forest Service closed the forest due to fire damages are without merit where the claimant did not ask for a postponement before the hearing in accordance with the provisions of the Rules of Practice nor raise the issues until 10 months after the hearing.

United States v. Leslie R. Godwin, 8 IBLA 258
(Dec. 4, 1972)

Where the Government refused prior to a hearing on its contest against mining claims to divulge the results of assays and beneficiation tests there was no unfair surprise at the hearing when the contestee failed to request a continuance after the evidence was presented. The failure to make such a request constituted a waiver of the contestee's original objection to proceeding with the hearing before he could examine all of the Government's reports and information on the claims.

United States v. E. Roy Grigg, 8 IBLA 331
(Dec. 8, 1972) 79 I.D. 682

A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

Rudolph Chase and Raymond W. Voss, 8 IBLA 351
(Dec. 11, 1972)

LANDS SUBJECT TO

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn.

Oliver and Robert A. Reese, Silver Associates, Inc., 4 IBLA 261 (Jan 21, 1972)

Lands acquired for national forests under the General Exchange Act of March 20, 1922, have the status of public lands of the

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

United States and are therefore subject to entry under the general mining laws.

The Atchison, Topeka & Santa Fe Railway Company v. Emma Mae Cox, United States of America v. Emma Mae Cox and M. D. Rawls and Edith Rawls, 4 IBLA 279 (Jan. 31, 1972)

An attempt to locate a mining claim made while the land is included in an application to withdraw the land from location or entry for metalliferous minerals under United States mining laws is invalid since the notation of the filing of the application on the land office records segregates the land from lands available for disposal under the mining laws to the extent that the proposed withdrawal would.

Lands which are known to be underlain by deposits of oil shale are withdrawn from operation of the United States mining laws by Executive Order 5327 of April 15, 1930, as supplemented by Public Land Order 4522 of September 13, 1968.

Kelly B. Hall, George I. Hackford, Thomas V. Reynolds, 4 IBLA 329 (Feb. 14, 1972)

A classification of land for disposition under the Recreation and Public Purposes Act segregates the land from mineral location until it is vacated; mining claims located while the land is so segregated are properly declared null and void ab initio.

Henri Guzek, 5 IBLA 133 (Mar. 10, 1972)

A classification of land by Bureau motion for disposition under the Recreation and Public Purposes Act segregates the land from mineral locations, and a mining claim located on lands so classified is null and void ab initio. Buch v. Morton, 449 F.2d 600 (9th Cir. 1971).

Gerald D. Heden, 6 IBLA 291 (July 6, 1972)

Section 2332, Rev. Stat., 30 U.S.C. § 38 (1970), may not create any rights to a mining claim against the United States where the land is not open to entry under the mining laws. If, however, the land becomes open for entry under the mining laws, and in the absence of any intervening rights, that provision may serve as a substitute to making a new location if the lands are held for the requisite number of years thereafter and a discovery of a valuable mineral deposit is then shown. This includes lands opened to mining claims under the Multiple Mineral Development Act, but under that Act the leasable minerals would be reserved to the United States.

Meritt N. Barton, 6 IBLA 293 (July 7, 1972) 79 I.D. 431-A

A classification of land by a Bureau of Land Management (BLM) motion for disposition under the Recreation and Public Purposes Act segregates the land from mineral locations, and a mining claim

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

located on lands so classified is null and void ab initio.

Leo Fred Huber, J. O. Archibald, 7 IBLA 131 (Aug. 25, 1972)

Under the Mining Claims Rights Restoration Act of 1955, public land within a preliminary permit issued by the Federal Power Commission under the Federal Power Act is not open to entry under the mining laws; a mining claim located after the permit has issued is properly declared void ab initio without a hearing.

Notice on public land status records in the local Bureau of Land Management office of the issuance of a preliminary permit by the Federal Power Commission, and the filing of the application for the permit and the application for a license with the Commission, is not essential to segregate the lands from location under the mining laws.

A failure of Government officials to provide information that land was closed to mining locations cannot give life to invalid mining claims.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

While land is withdrawn from mineral location no rights to the land may be gained under mining claims located during the withdrawal period.

Where lands within power site withdrawals were restored to mineral location by the Mining Claims Rights Restoration Act, they will subsequently be closed to such location when and so long as such lands are within a preliminary permit issued by the Federal Power Commission or an application for a license for a project filed by the permittee while the permit is in effect.

Gardner C. McFarland, 8 IBLA 56 (Oct. 13, 1972)

Mining claims located after the land has been segregated from appropriation under the mining laws by notice of proposed classification under the Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-18 (1970), published in the Federal Register are properly declared null and void ab initio.

Rudolph Chase and Raymond W. Voss, 8 IBLA 351 (Dec. 11, 1972)

Mining claims located on lands within a reclamation withdrawal which were not open to mineral entry are properly declared null and void ab initio.

Public lands covered by a license or an application for a license for a power project issued by the Federal Power Commission are not open to mineral location.

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Since § 9(d) of the Wild and Scenic Rivers Act withdraws from mineral location only lands which constitute the bed or bank or are situated within one-quarter mile of the bank of a river listed in § 5(a) as a potential addition to the wild and scenic rivers system, the designation pursuant to § 5(d) of that Act of a river area as one which federal agencies shall evaluate in their planning reports does not place the river in the category of a potential addition to the wild and scenic rivers system or withdraw the bed or banks of the river or lands within one-quarter mile of the bank of the river from mineral location.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

LOCATION

A mining claimant bears the responsibility of maintaining markings for mining claims and discovery points within them.

The Atchison, Topeka & Santa Fe Railway Company v. Emma Mae Cox, United States of America v. Emma Mae Cox and M. D. Rawls and Edith Rawls, 4 IBLA 279 (Jan. 31, 1972)

To hold that a mining claim located for a common variety of sand and gravel prior to July 23, 1955, must be perfected by a discovery (including marketability) made before that date is not to give retrospective application to the Act of July 23, 1955, which bars locations thereafter made for common varieties of sand and gravel.

United States v. The Dredge Corporation, 7 IBLA 136 (Aug. 25, 1972)

A compound, of which sodium is a major constituent, is not subject to location under the mining laws; if disposable from the public lands it would be subject only to lease or permit under the Act of February 25, 1920, §§ 23-25, as amended, 30 U.S.C. §§ 261-263 (1970).

United States v. Curtis H. Springer, et al., 8 IBLA 123 (Nov. 14, 1972)

LODE CLAIMS

To constitute a valid discovery upon a lode mining claim there must be exposed within the limits of the claim a lode or vein bearing mineral in such quality and quantity which would warrant a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

United States v. L. B. McGuire, 4 IBLA 307 (Feb. 4, 1972)

Lode claims cannot validly be located for deposits of building stone which under the Act of August 4, 1892, can be located only as placer claims.

United States v. Cascade Ornamental Building Stone, Inc., et al., 8 IBLA 447 (Dec. 29, 1972)

MINING CLAIMS--Continued

MILL SITES

Millsites that are not being used or occupied for milling or mining purposes are properly declared invalid; a prospective or intended use for such purposes is not enough to validate the locations.

The United States can at any time withdraw its consent to disposition of public land under the mining laws by withdrawal of the land or by bringing adverse proceedings against a millsite or mining location, requiring the determination of the validity of claims.

United States v. Christian F. Murer, 4 IBLA 242 (Jan. 11, 1972)

MINERAL LANDS

To establish the mineral character of lands it must be shown that the known conditions are such as to engender the belief that the lands contain mineral of such quality and quantity as to render its extraction profitable and justify expenditure to that end; the mineral character of the land may be established by inference without the exposure of the mineral deposit for which the land is supposed to be valuable.

Since geological inference may be used in establishing the mineral character of lands within a claim and such inferences can arise from proof of discovery on the claim, it is advisable not to dispose of the issue of mineral character before deciding the issue of discovery.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

Where in a proceeding under the section 5 of Surface Resources Act, 30 U.S.C. § 613 (1970), the Government has accepted a verified statement by a mining claimant alleging surface rights to the land within his claims, such acceptance being conditioned upon a stipulation which expressly provides that "nothing herein shall be construed as precluding the United States from contesting the validity of these claims by subsequent proceedings," and where no mention is made of the mineral character of the claims, no determination has been made by the Government that the land is mineral in character.

The issuance of a final certificate to a mining claim does not constitute a determination that land is mineral in character.

In order that land be considered mineral in character, as contemplated by the mining laws, the known conditions must be such as reasonably to engender the belief that the land contains mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end. It is not necessary to show that the land contains a valid mining claim; the character of land as mineral may be determined through geologic inference, by the presence of minerals in substantial quantities on adjacent lands, or by other external conditions.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

MINING CLAIMS--Continued

PATENT

The rejection of an application for patent to a mining claim in a contest proceeding on the ground that a discovery has not been made is necessarily a determination that the claim is invalid.

United States v. William J. Bartels, Sr., et al., 6 IBLA 124 (June 5, 1972)

Section 2332, Rev. Stat., 30 U.S.C. § 38 (1970), does not obviate the necessity of a mining claimant to show a valid discovery in order to be entitled to a patent for a mining claim.

Meritt N. Barton, 6 IBLA 293 (July 7, 1972) 79 I.D. 431-A

Where (1) an association placer mining claim embracing 80 acres was located for a common variety sand and gravel prior to July 23, 1955, (2) the sand and gravel was mined, removed and marketed at a profit from a portion of the claim before July 23, 1955, (3) a mineral patent has been issued for some of the 10-acre subdivisions of the claim, and (4) the mineral material deposits on the unpatented portion of the claim are similar in nature to the mineral found on the patented portion of the claim, which deposits had been mined, removed and marketed at a profit prior to July 23, 1955, and thereafter, it is error to hold such unpatented 10-acre subdivisions within the claim to be nonmineral in character and to reject a mineral patent application therefor.

Where mineral material on some 10-acre subdivisions within an association placer mining claim embracing 80 acres is not of as high a quality as the mineral which was being mined, removed and marketed at a profit on July 23, 1955, from now patented portions of the claim, it is proper to hold that such unpatented 10-acre subdivisions within the claim are nonmineral in character and to reject a mineral patent application therefor.

United States v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21 (July 26, 1972) 79 I.D. 457

A lode mining claim is properly declared null and void, and an application for a patent rejected when the claimant fails to show by a preponderance of the evidence that there is a discovery of a valuable mineral deposit within the limits of the claim.

United States v. George Avgeris, 8 IBLA 316 (Dec. 7, 1972)

Inability of a mining claimant to make the necessary capital investment to establish the existence of a discovery of a valuable mineral deposit is not an excuse or substitute for failure of the claimant to prove the existence of the deposit in order to be entitled to a patent for a mining claim.

United States v. E. Roy Grigg, 8 IBLA 331 (Dec. 8, 1972) 79 I.D. 682

MINING CLAIMS--Continued

PLACER CLAIMS

To satisfy the requirements for discovery on a placer mining claim located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim, by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, could have been extracted, removed, and marketed at a profit as of that date.

United States v. Humboldt Placer Mining Company and Del De Rosier, 8 IBLA 407 (Dec. 20, 1972) 79 I.D. 709

Lode claims cannot validly be located for deposits of building stone which under the Act of August 4, 1892, can be located only as placer claims.

United States v. Cascade Ornamental Building Stone, Inc., et al., 8 IBLA 447 (Dec. 29, 1972)

POWER SITE LANDS

Where lands within power site withdrawals were restored to mineral location by the Mining Claims Rights Restoration Act, they will subsequently be closed to such location when and so long as such lands are within a preliminary permit issued by the Federal Power Commission or an application for a license for a project filed by the permittee while the permit is in effect.

The Mining Claims Rights Restoration Act did not retroactively validate mining claims located prior to the Act while the land was within a power site withdrawal.

The Bureau of Land Management, without holding an evidentiary hearing, may properly declare that mining claims were null and void ab initio when they were located while land was within a power site withdrawal and no rights therein could be based upon the original locations. However, such a finding does not determine the validity of claims located after the lands were opened to mineral location by the Mining Claims Rights Restoration Act or held thereafter for the period prescribed by 30 U.S.C. § 38 (1970).

Gardner C. McFarland, 8 IBLA 56 (Oct. 13, 1972)

Public lands covered by a license or an application for a license for a power project issued by the Federal Power Commission are not open to mineral location.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

RELOCATION

Section 2332, Rev. Stat., 30 U.S.C. § 38 (1970), may not create any rights to a mining claim against the United States where the land is not open to entry under the mining laws. If, however, the land becomes open for entry under the mining laws, and in the absence of any intervening rights, that provision may serve as a substitute to making a new location if the lands are held for the requisite number of years thereafter and a discovery of a valuable mineral deposit is

MINING CLAIMS--Continued

RELOCATION--Continued

then shown. This includes lands opened to mining claims under the Multiple Mineral Development Act, but under that Act the leasable minerals would be reserved to the United States.

Meritt N. Barton, 6 IBLA 293 (July 7, 1972) 79 I.D. 431-A

SPECIAL ACTS

A verified statement filed by a mining claimant pursuant to Section 5 of the Act of July 23, 1955, 30 U.S.C. § 613 (1970), asserting rights to the surface resources on its mining claim is properly rejected where the statement is filed more than 150 days from the first date of the publication of notice to miners under Section 5(a) of the Act.

St. Anthony Mines, Inc., 6 IBLA 159 (June 14, 1972)

The failure of a mining claimant to make the required annual rental payments in advance for claims located under the Act of June 18, 1934, 48 Stat. 984, as amended, August 28, 1937, 50 Stat. 862, 863, within the Papago Indian Reservation is a sufficient basis for invalidating the claims where the annual rental payments were not remitted until almost three months after the due date and no explanation is offered for the delay.

I.M. and Robert L. Clausen, 7 IBLA 286 (Sept. 22, 1972)

SURFACE USES

A verified statement filed by a mining claimant pursuant to section 5 of the Act of July 23, 1955, 30 U.S.C. § 613 (1970), asserting rights to the surface resources on its mining claim is properly rejected where the statement is filed more than 150 days from the first date of the publication of notice to miners under section 5(a) of the Act.

St. Anthony Mines, Inc., 6 IBLA 159 (June 14, 1972)

A verified statement filed pursuant to 30 U.S.C. § 613 (1970) is properly rejected to the extent that it covers mining claims previously declared null and void.

Evelyn M. Kiggins, et al., 6 IBLA 235 (June 26, 1972)

In a proceeding under section 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the use and management of the surface and its resources on certain gold mining claims, the issue is whether or not there is presently disclosed within the boundaries of each claim valuable minerals of sufficient quantity, quality, and value to constitute a discovery, and evidence to establish that the discovery was made prior to the effective date of the Act. 30 U.S.C. § 613.

MINING CLAIMS--Continued

SURFACE USES--Continued

Under section 5 of the Surface Resources Act of July 23, 1955, the effect of a decision that no mineral discovery has been shown is to permit the Government to manage and dispose of the vegetative and other surface resources without disturbing claimant's right to develop his gold mining claim by using the subsurface and surface to the extent necessary to conduct his mining operations. 30 U.S.C. § 613.

United States v. Fannie E. Lewis Trussel, 7 IBLA 225 (Sept. 11, 1972)

WITHDRAWN LAND

Mining claims located on land withdrawn from mineral entry are null and void ab initio.

Where the mineral claimant asserts that his claim is not located on land withdrawn from entry under the mining laws, and the record indicates that part of the claim is not on withdrawn land, the claim cannot be declared null and void ab initio for having been located on land withdrawn from mineral entry without a hearing to determine the facts.

Wesley Laubscher, 4 IBLA 246 (Jan. 12, 1972)

Where the land occupied by mining claims is subsequently withdrawn from all forms of exploration, location and entry under the mining laws, evidence obtained thereafter by drilling, sampling and other exploratory activities cannot be considered for any purpose other than the extent to which such geological investigations may tend to support an assertion that valuable deposits of minerals had been physically disclosed within the boundaries of each of the claims prior to that date, i.e., the qualifying discovery must have been made prior to the date of the withdrawal.

United States v. Gunsight Mining Company, 5 IBLA 62 (Mar. 1, 1972)

An application under the Act of April 23, 1932, 43 U.S.C. § 154, for restoration to mineral location and entry of reclamation withdrawn lands will ordinarily be rejected when the Bureau of Reclamation has recommended against it where there remains a possibility of the location of project features in the future, even though there are no project features on the land at the time of filing the petition for restoration.

Where an applicant under the Act of April 23, 1932, 43 U.S.C. § 154, for restoration to mineral location and entry of reclamation withdrawn lands alleges that the lands contain valuable minerals, which can be removed before a proposed dam is completed, and that it is willing to operate in any way as directed for the protection of the interest of the United States, the case will be remanded for a mineral examination and report to determine whether the alleged mineral deposits are of sufficient value to make mining operations profitable.

Surprise Venture Associates, 7 IBLA 44 (Aug. 1, 1972)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Mining claims located on lands withdrawn from entry under the mining laws are null and void ab initio, and the subsequent restoration of the lands cannot serve to validate the void mining claims.

Norman A. Whittaker, 8 IBLA 17 (Oct. 6, 1972)

Mining claims located on lands within a reclamation withdrawal which were not open to mineral entry are properly declared null and void ab initio.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

MINING CLAIMS RIGHTS RESTORATION ACT

Under the Mining Claims Rights Restoration Act of 1955, public land within a preliminary permit issued by the Federal Power Commission under the Federal Power Act is not open to entry under the mining laws; a mining claim located after the permit has issued is properly declared void ab initio without a hearing.

Notice on public land status records in the local Bureau of Land Management office of the issuance of a preliminary permit by the Federal Power Commission, and the filing of the application for the permit and the application for a license with the Commission, is not essential to segregate the lands from location under the mining laws.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

Where lands within power site withdrawals were restored to mineral location by the Mining Claims Rights Restoration Act, they will subsequently be closed to such location when and so long as such lands are within a preliminary permit issued by the Federal Power Commission or an application for a license for a project filed by the permittee while the permit is in effect.

The Mining Claims Rights Restoration Act did not retroactively validate mining claims located prior to the Act while the land was within a power site withdrawal.

The Bureau of Land Management, without holding an evidentiary hearing, may properly declare that mining claims were null and void ab initio when they were located while land was within a power site withdrawal and no rights therein could be based upon the original locations. However, such a finding does not determine the validity of claims located after the lands were opened to mineral location by the Mining Claims Rights Restoration Act or held thereafter for the period prescribed by 30 U.S.C. § 38 (1970).

Gardner C. McFarland, 8 IBLA 56 (Oct. 13, 1972)

Public lands covered by a license or an application for a license for a power project issued by the Federal Power Commission are not open to mineral location.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

MINING OCCUPANCY ACT

GENERALLY

An application under the Mining Claims Occupancy Act is properly rejected where the mining claim has not been invalidated or relinquished.

Walter L. Hurlburt, et al., 7 IBLA 255 (Sept. 15, 1972)

The purpose of the Mining Claims Occupancy Act is to permit certain persons, whose mining claims have been invalidated or relinquished, to continue to reside in their long established homes, but the Act was not intended to allow a claimant to acquire an interest thereunder and also to retain or convey to another an existing mining claim in the same property. 30 U.S.C. §§ 701, 702 (1970).

Dorothy M. Long, 8 IBLA 4 (Oct. 3, 1972)

Under the Mining Occupancy Act, the Secretary of the Interior may convey an interest in land which is under the administrative jurisdiction of the Forest Service to a qualified applicant only with the consent of the Forest Service; therefore, if the Forest Service determines that the applicant should be offered only a lifetime lease, the Secretary lacks authority to grant any greater interest in the land.

Charles A. Hendel, 8 IBLA 400 (Dec. 19, 1972)

A qualified applicant for conveyance of land under the Mining Claims Occupancy Act of October 23, 1962, must have been on that date a residential occupant-owner of valuable improvements in an unpatented mining claim which constituted for him a principal place of residence, and where on that date an applicant has only occupied the claim in a tent and small portable trailer, which were removed during the winter months, there were not valuable improvements on the claim which could constitute a residence under the Act.

Leslie and Lucy Neilson, 8 IBLA 404 (Dec. 20, 1972)

CONVEYANCES

Under the Mining Claims Occupancy Act, 30 U.S.C. § 703 (1970), the Secretary of the Interior may convey an interest in land under the administrative jurisdiction of the Forest Service to a "qualified applicant" only with the consent of the head of the administering agency.

Charles N. Olson, 5 IBLA 4 (Feb. 18, 1972)

If an applicant under the Mining Claims Occupancy Act thereafter conveys to another an interest in an overlapping mining claim to the same property, the application may be denied despite allegation of an oral conditional promise by the claim owner to relinquish the portion of the claim which includes the occupancy site, when and if the occupancy application is approved. 30 U.S.C. § 701 (1970).

Dorothy M. Long, 8 IBLA 4 (Oct. 3, 1972)

MINING OCCUPANCY ACT--Continued

PRINCIPAL PLACE OF RESIDENCE

Under the Mining Claims Occupancy Act, as amended, 30 U.S.C. §§ 701-709 (1970), where a predecessor in interest of an applicant thereunder failed to use the improvements on the land as a principal place of residence during a substantial portion of the 7-year period immediately prior to July 23, 1962, the applicant does not meet the requirements of a qualified applicant as defined in the Act and the governing regulations, regardless of the extent of his own residence during his ownership of the claim.

In order to constitute "a principal place of residence" within the meaning of the Act of October 23, 1962, a mining claim site must have been, on that date, a principal place of residence for the applicant under the Act, and a site cannot qualify as a principal place of residence upon the basis of the cumulative use of a number of applicants, none of whom has used it as a principal place of residence.

Walter L. Hurlburt, et al., 7 IBLA 255 (Sept. 15, 1972)

In an application under the Mining Claims Occupancy Act, it is within the discretion accorded to the Department to require that corroborative evidence be presented as to the facts of residence, and failure to present such evidence is reason for denial of the application where the facts of record do not support the conveyance. 30 U.S.C. § 702, 43 CFR 2550.0-5 (1972).

Dorothy M. Long, 8 IBLA 4 (Oct. 3, 1972)

A qualified applicant for conveyance of land under the Mining Claims Occupancy Act of October 23, 1962, must have been on that date a residential occupant-owner of valuable improvements in an unpatented mining claim which constituted for him a principal place of residence, and where on that date an applicant has only occupied the claim in a tent and small portable trailer, which were removed during the winter months, there were not valuable improvements on the claim which could constitute a residence under the Act.

Leslie and Lucy Neilson, 8 IBLA 404 (Dec. 20, 1972)

QUALIFIED APPLICANT

To qualify for relief under the Mining Claim Occupancy Act of October 23, 1962, an applicant must show that he is a residential occupant-owner of valuable improvements in an unpatented mining claim which constitutes for him a principal place of residence in which he and his predecessors were in possession of for not less than seven years prior to July 23, 1962, or that he is the heir or devisee of such resident owner-occupant.

James and Anna Willis, 6 IBLA 272 (June 29, 1972)

Under the Mining Claims Occupancy Act, as amended, 30 U.S.C. §§ 701-709 (1970), where a predecessor in interest of an

MINING OCCUPANCY ACT--Continued

QUALIFIED APPLICANT--Continued

applicant thereunder failed to use the improvements on the land as a principal place of residence during a substantial portion of the 7-year period immediately prior to July 23, 1962, the applicant does not meet the requirements of a qualified applicant as defined in the Act and the governing regulations, regardless of the extent of his own residence during his ownership of the claim.

A person who acquired his interest in an unpatented mining claim after October 23, 1962, by a method other than devise or descent, cannot be considered a qualified applicant under the Mining Claims Occupancy Act and the regulations thereunder, which require that a qualified applicant must have been the residential occupant-owner of the improvements on an unpatented mining claim as of that date, or be the heir or devisee of such a residential occupant-owner.

Walter L. Hurlburt, et al., 7 IBLA 255 (Sept. 15, 1972)

MULTIPLE MINERAL DEVELOPMENT ACT

GENERALLY

Proceedings under the Multiple Mineral Development Act, 30 U.S.C. § 521 et seq. (1970), will be suspended until final decisions are rendered in proposed Government contest proceedings against the same mining claims.

United States Smelting Refining and Mining Company v. Tell Ertl, et al., 6 IBLA 253 (June 28, 1972)

Section 2332, Rev. Stat., 30 U.S.C. § 38 (1970), may not create any rights to a mining claim against the United States where the land is not open to entry under the mining laws. If, however, the land becomes open for entry under the mining laws, and in the absence of any intervening rights, that provision may serve as a substitute to making a new location if the lands are held for the requisite number of years thereafter and a discovery of a valuable mineral deposit is then shown. This includes lands opened to mining claims under the Multiple Mineral Development Act, but under that Act the leasable minerals would be reserved to the United States.

Meritt N. Barton, 6 IBLA 293 (July 7, 1972) 79 I.D. 431-A

Proceedings under the Multiple Mineral Development Act, 30 U.S.C. § 521 et seq. (1970), will be suspended until final decisions are rendered in proposed Government contest proceedings against the same mining claims.

Gabbs Exploration Company, United States Smelting Refining & Mining Company, 7 IBLA 318 (Sept. 25, 1972)

HEARINGS

No hearing pursuant to the Multiple Mineral Development Act will be held with respect to rights asserted by a verified statement in a proceeding under that Act to the extent such rights are defined by a stipulation entered

MULTIPLE MINERAL DEVELOPMENT ACT--Continued

HEARINGS--Continued

into pursuant to section 7(c) of the Act; however, such stipulation does not preclude the Department of the Interior from instituting contest proceedings to determine the existence of such rights.

United States Smelting Refining and Mining Company v. Tell Ertl, et al., 6 IBLA 253 (June 28, 1972)

Where there were no outstanding permits, leases or applications for leases for minerals subject to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), when mining claims were located in 1945 and 1952, but the Geological Survey in 1968 has reported that the lands were known to be valuable for leasable minerals subject to that Act since 1920, a mining claimant is entitled to a hearing on the question of the known mineral character of the land at the time his claims were located before the claims can be declared void ab initio for his failure to file amended locations as required to take advantage of the benefits of section 1 of the Multiple Mineral Development Act of August 13, 1954, 30 U.S.C. § 521 (1970).

Meritt N. Barton, 6 IBLA 293 (July 7, 1972) 79 I.D. 431-A

No hearing pursuant to the Multiple Mineral Development Act will be held with respect to rights asserted by a verified statement in a proceeding under that Act to the extent such rights are defined by a stipulation incidental to and pursuant to section 7(c) of the Act; however, such stipulation does not preclude the Department of the Interior from initiating a contest proceeding to determine the existence of a mining claimant's rights. A verified statement is properly rejected and a stipulation properly dismissed insofar as the statement or stipulation covers mining claims which are null and void.

Gabbs Exploration Company, United States Smelting Refining & Mining Company, 7 IBLA 318 (Sept. 25, 1972)

VERIFIED STATEMENT

No hearing pursuant to the Multiple Mineral Development Act will be held with respect to rights asserted by a verified statement in a proceeding under that Act to the extent such rights are defined by a stipulation entered into pursuant to section 7(c) of the Act; however, such stipulation does not preclude the Department of the Interior from instituting contest proceedings to determine the existence of such rights.

United States Smelting Refining and Mining Company v. Tell Ertl, et al., 6 IBLA 253 (June 28, 1972)

No hearing pursuant to the Multiple Mineral Development Act will be held with respect to rights asserted by a verified statement in a proceeding under that Act to the extent such rights are defined by a stipulation incidental to and pursuant to section 7(c) of the Act; however, such stipulation does not preclude the Department of the Interior from initiating a contest

MULTIPLE MINERAL DEVELOPMENT ACT--Continued

VERIFIED STATEMENT--Continued

proceeding to determine the existence of a mining claimant's rights. A verified statement is properly rejected and a stipulation properly dismissed insofar as the statement or stipulation covers mining claims which are null and void.

Gabbs Exploration Company, United States Smelting Refining & Mining Company, 7 IBLA 318 (Sept. 25, 1972)

NAVAL PETROLEUM RESERVES

The Executive Order of 1923 creating Naval Petroleum Reserve No. 4 is a continuing withdrawal; it included all public domain lands within the exterior boundaries defined in the Executive Order and includes all lands which thereafter reverted to the unappropriated public domain within that area.

Starling Brokers, et al., 6 IBLA 237 (June 26, 1972)

Lands within Naval Petroleum Reserve No. 4 are not subject to oil and gas leasing under the Mineral Leasing Act of 1920.

William B. Murray and Chris Palzer, 7 IBLA 158 (Aug. 30, 1972)

The Department of the Navy has exclusive jurisdiction over the petroleum resources within Naval Petroleum Reserve No. 4, and the Secretary is not authorized to issue oil and gas leases on lands embraced within the Reserve.

Chris Palzer, et al., 8 IBLA 299 (Dec. 6, 1972)

NOTICE

Notice on public land status records in the local Bureau of Land Management office of the issuance of a preliminary permit by the Federal Power Commission, and the filing of the application for the permit and the application for a license with the Commission, is not essential to segregate the lands from location under the mining laws.

A failure of Government officials to provide information that land was closed to mining locations cannot give life to invalid mining claims.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

Only mining claimants who file the verified statement required by section 5(a) of the Act of July 23, 1955, are entitled to a notice of a hearing to determine rights to the surface resources of a mining claim.

United States v. Leslie R. Godwin, 8 IBLA 258 (Dec. 4, 1972)

Failure of a mineral examiner to notify a claimant of a field examination is not a sufficient reason in a subsequent contest against mining claims to disqualify

NOTICE--Continued

the Government's evidence of the examination and sampling, especially where the field examination was of sites previously identified in joint examinations conducted with the claimant.

United States v. E. Roy Grigg, 8 IBLA 331 (Dec. 8, 1972) 79 I.D. 682

OIL AND GAS LEASES

GENERALLY

Where the United States has paid for land and claimed title to that land for almost 40 years but title has not been perfected, oil and gas leases may be issued on that land if the public interest and fairness to the offeror warrant such action.

Duncan Miller, 5 IBLA 21 (Feb. 22, 1972)

The Board adheres to its decision in Quantex Corporation et al., 78 I.D. 317 (1971), that applicants for oil and gas leases must give written acceptance of reasonable special stipulations requested by the Bureau of Land Management relating to protection of the land and surface resources under its jurisdiction and to stipulations governing use of lands in the oil shale area of Utah as conditions precedent to issuance of noncompetitive public domain oil and gas leases.

Geocon, Inc. and Cameo Minerals, Inc., et al., 5 IBLA 91 (Mar. 6, 1972)

The board adheres to its decision in Quantex Corporation et al., 78 I.D. 317 (1971), that applicants for oil and gas leases must give written acceptance to reasonable special stipulations requested by the Bureau of Land Management relating to protection of the land and surface resources under its jurisdiction and to stipulations governing use of lands in the oil shale area of Utah as conditions precedent to issuance of noncompetitive public domain oil and gas leases.

Bob Owen White, et al., 5 IBLA 229 (Mar. 22, 1972)

When the United States issues an oil and gas lease, it makes no warranty as to its title to the oil and gas deposits and is under no obligation to the lessee either to discover and dispose of any other claims to the oil and gas deposits, not reflected by the records of the Bureau of Land Management, prior to issuance of the lease, or to defend the lease thereafter against such claims.

Georgette B. Lee, 5 IBLA 295 (Apr. 13, 1972)

Although statute requires the consent of the agency administering the surface of acquired federal lands and an applicant for an oil and gas lease must execute any special stipulations required by such agency as a condition to the issuance of the lease, where an oil and gas lease offer is made for

OIL AND GAS LEASES--Continued

GENERALLY--Continued

available public lands which have been withdrawn the determination to lease or not to lease is properly made by the Department of the Interior and it may adopt and incorporate special stipulations proposed by the agency administering the surface and require the offeror to agree thereto, or it may decline to adopt any such proposed stipulations and issue the lease without them. Proposed special lease stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest.

Duncan Miller, 6 IBLA 216 (June 22, 1972) 79 I.D. 416

Oil and gas lease offers for lands embraced within Public Land Order 3521, which provides that none of the public lands within the area shall be subject to oil and gas leasing until certain procedures, including the preparation of approved leasing maps, have been accomplished, are properly rejected where, although the lands described in the offers are shown on protraction diagrams on which leasing "blocks" have been designated, such lands have not been included within any such leasing blocks and they lie within two miles of Naval Petroleum Reserve No. 4, and are therefore not to be opened to leasing under the terms of PLO 3521.

Chris Palzer, et al., 6 IBLA 248 (June 27, 1972)

An applicant for an oil and gas lease is properly required to accept special stipulations imposed by a State Director, Bureau of Land Management, where the stipulations are consistent with the lease terms, regulations and Departmental policies, and where the requirements of those stipulations are not unreasonable or onerous.

John Oakason et al., 6 IBLA 275 (June 29, 1972)

An applicant for an oil and gas lease is required to consent to special stipulations where the stipulations are consistent with the lease terms, regulations and departmental policies and where the requirements of the stipulations are not unreasonable or onerous.

All applicants for oil and gas leases covering lands withdrawn for oil shale must execute the special stipulations required by Secretarial Order No. 2906 of September 27, 1968.

Ida Lee Anderson et al., 6 IBLA 314 (July 12, 1972)

Where a water users' association was--under a 1940 contract between the United States and the association transferring care, operation, and maintenance of a reclamation project to the association--entitled to make, subject to the approval of the Secretary of the Interior, oil and gas leases on lands specially acquired for the project and to be credited with the revenues therefrom in conformity with subsection 1 of section 4 of the Act of December 5, 1924 (43 U.S.C. § 501), Congress did not intend, in

OIL AND GAS LEASES--Continued

GENERALLY--Continued

enacting the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351), to take such rights away from the association.

Strawberry Valley Project, Utah, M-36863 (Aug. 8,1972) 79 I.D. 513

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not been posted as available for filing as prescribed by 43 CFR Subpart 3112.

Jack E. Griffin, 7 IBLA 155 (Aug. 30, 1972)

An oil and gas lease offer is properly rejected as to land formerly included in a lease which terminated by operation of law, where the land had not been posted as available for filing in accordance with 43 CFR Subpart 3112 (1972).

An oil and gas lease offer for lands embraced within Public Land Order 3521 which provides that none of the public lands within the area shall be subject to oil and gas leasing until certain procedures, including the preparation of approved leasing maps, have been accomplished, is properly rejected where, although the lands described in the offer are shown on protraction diagrams on which "leasing blocks" have been designated, such lands have not been included within any such "leasing block" as they lie partially within two miles of Naval Petroleum Reserve No. 4, and are therefore not to be opened to leasing under the terms of PLO 3521.

William B. Murray and Chris Palzer, 7 IBLA 158 (Aug. 30, 1972)

Where by Public Land Order 3521 an area of public land has been declared to be unavailable for noncompetitive oil and gas leasing until certain steps have been taken, and the requisite steps have not been taken, the land is not subject to oil and gas leasing and an offer for it is properly rejected.

Bertil A. Granberg, 7 IBLA 174 (Sept. 1, 1972)

Oil and gas lease offers for lands in Alaska embraced within Public Land Order 3521 are properly rejected where the procedures described in said order as a prerequisite for leasing have not been carried out for the lands included in the offers.

Joseph MacIsaac, et al., 8 IBLA 51 (Oct. 12, 1972)

A request to consolidate two noncompetitive oil and gas leases, which originally comprised one lease held by the applicant, must be denied where one of the leases has expired by operation of law.

Duncan Miller, 8 IBLA 235 (Nov. 29, 1972)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Failure of a lessee to pay rental on or before the anniversary date of a lease, on which there is no well capable of producing oil or gas in paying quantities, results in the automatic termination of the lease by operation of law. A lease so terminated may be reinstated only if the terms and conditions of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970) have been satisfied.

An applicant asserting a claim to benefits of an Act of Congress has the burden of furnishing sufficient evidence of his entitlement thereto. Failure to submit such evidence will result in the denial of his claim. Where an applicant seeks reinstatement of his oil and gas lease under the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970), he has the burden of establishing by persuasive evidence that the failure to pay his full rental timely was either justifiable or not due to a lack of reasonable diligence. Mere assertions, unsupported by any probative evidence, are not sufficient.

James E. Fowler and Frances T. Fowler, 8 IBLA 372 (Dec. 12, 1972)

ACQUIRED LANDS LEASES

An acquired lands lease offer filed for land leasable only under the Mineral Leasing Act of 1920, as amended, must be rejected.

Leroy Gatlin, 4 IBLA 272 (Jan. 21, 1972)

Where an offeror for an oil and gas lease seeks to avail himself of a provision of a regulation which permits him to describe lands by "acquisition tract number," and where that term has not been defined, he will not be held to have lost his statutory preference right for failure to comply with the regulation if the numbers given may reasonably be regarded as "acquisition tract numbers" and the description thereby afforded is accurate for the purpose.

Arthur E. Meinhart, Irwin Rubenstein, Appellants Pan American Petroleum Corp., Appellee, 5 IBLA 345 (Apr. 18, 1972)

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease. The applicant, rather than this Department, must seek any modification or qualification of the stipulation from such agency.

Duncan Miller, 5 IBLA 364 (Apr. 19, 1972)

The subdivision of acquired lands of the United States into a rectangular system having aliquot parts similar to those employed in the public land surveys does not make the lands so designated

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

"surveyed" within the ambit of the regulations under the Mineral Leasing Act for Acquired Lands when the plat of the survey has not been approved by the Director, Bureau of Land Management.

Arthur E. Meinhart, Irwin Rubenstein, Appellants, Bruce Anderson, Appellee, 6 IBLA 39 (May 12, 1972)

Although statute requires the consent of the agency administering the surface of acquired federal lands and an applicant for an oil and gas lease must execute any special stipulations required by such agency as a condition to the issuance of the lease, where an oil and gas lease offer is made for available public lands which have been withdrawn the determination to lease or not to lease is properly made by the Department of the Interior and it may adopt and incorporate special stipulations proposed by the agency administering the surface and require the offeror to agree thereto, or it may decline to adopt any such proposed stipulations and issue the lease without them. Proposed special lease stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest.

Duncan Miller, 6 IBLA 216 (June 22, 1972)
79 I.D. 416

Where a water users' association was--under a 1940 contract between the United States and the association transferring care, operation, and maintenance of a reclamation project to the association--entitled to make, subject to the approval of the Secretary of the Interior, oil and gas leases on lands specially acquired for the project and to be credited with the revenues therefrom in conformity with subsection 1 of section 4 of the Act of December 5, 1924 (43 U.S.C. § 501), Congress did not intend, in enacting the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351), to take such rights away from the association.

Strawberry Valley Project, Utah, M-36863 (Aug. 8, 1972) 79 I.D. 513

Where approval is sought for partial assignment of an acquired lands oil and gas lease of less than a quarter - quarter section, the assignment is of less than a legal subdivision under 43 CFR 3106.3-2 (1972) and there must be clear and convincing evidence of the necessity thereof or approval is properly refused.

Dictum: Where a communitization agreement approved by the Geological Survey segregates an uncommunitized parcel of less than a quarter-quarter section, the required necessity for an assignment of the parcel under 43 CFR 3196.3-2 (1972) would be established.

James P. Witmer, 7 IBLA 366 (Sept. 29, 1972)

APPLICATIONS

Where an offer to lease lands for oil and gas cannot be accepted because the lands, at the time of the filing of the offer, are not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

M. F. Trask, 4 IBLA 252 (Jan. 13, 1972)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statements of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time prescribed, strict compliance with the Department's regulations may not be waived to favor an applicant who pleads ignorance of the law or inexperience in oil and gas leasing.

Hiroshi Mizoguchi, 4 IBLA 249 (Jan. 12, 1972)

Regulations should be so clear that there is no basis for an oil and gas lease applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

Louis Alford, Prescott A. Sherman, 4 IBLA 277 (Jan. 27, 1972)

Where an over-the-counter noncompetitive oil and gas lease offer is filed by a corporation unaccompanied by a statement of its qualifications or a reference by serial number to the record in which it has been filed, and such defect is remedied prior to the filing of any junior offer, the first offer may be considered with priority as of the date the curative data is filed.

Bear Creek Corporation, 5 IBLA 202 (Mar. 20, 1972)

A person who files an oil and gas offer which is violative of applicable regulations acquires no rights thereby.

Rose Mary Johnson, et al., 5 IBLA 279 (Apr. 13, 1972)

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease. The applicant, rather than this Department, must seek any modification or qualification of the stipulation from such agency.

Duncan Miller, 5 IBLA 364 (Apr. 19, 1972)

A simultaneously filed oil and gas lease offer which gain priority at a public drawing is properly rejected in its entirety when it is discovered that the offer was jointly made by two persons, one of whom is an employee of the Department of the Interior who is prohibited from voluntarily acquiring any interest in the lands or resources administered by the Bureau of Land Management, and although the other joint offeror is apparently a qualified individual, that fact cannot operate either to validate the offer as presented or to require

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

that it be divided so as to separate the interest of the qualified individual from that of the unqualified individual.

Carmen M. Luna, 6 IBLA 176 (June 15, 1972)

The regulations requiring that advance rental payment and filing fee must accompany the offer cannot be satisfied by a check returned by the bank as uncollectible; nor is a substitute check filed without adequate explanation sufficient to avert or reverse cancellation of the lease.

Charles F. Mullins, 6 IBLA 184 (June 15, 1972)

Although statute requires the consent of the agency administering the surface of acquired federal lands and an applicant for an oil and gas lease must execute any special stipulations required by such agency as a condition to the issuance of the lease, where an oil and gas lease offer is made for available public lands which have been withdrawn the determination to lease or not to lease is properly made by the Department of the Interior and it may adopt and incorporate special stipulations proposed by the agency administering the surface and require the offeror to agree thereto, or it may decline to adopt any such proposed stipulations and issue the lease without them. Proposed special lease stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest.

Duncan Miller, 6 IBLA 216 (June 22, 1972)
79 I.D. 416

Oil and gas lease offers for lands embraced within Public Land Order 3521, which provides that none of the public lands within the area shall be subject to oil and gas leasing until certain procedures, including the preparation of approved leasing maps, have been accomplished, are properly rejected where, although the lands described in the offers are shown on protraction diagrams on which leasing "blocks" have been designated, such lands have not been included within any such leasing blocks and they lie within two miles of Naval Petroleum Reserve No. 4, and are therefore not to be opened to leasing under the terms of PLO 3521.

Chris Palzer et al., 6 IBLA 248 (June 27, 1972)

An oil and gas lease offer for lands embraced within Public Land Order 3521 which provides that none of the public lands within the area shall be subject to oil and gas leasing until certain procedures, including the preparation of approved leasing maps, have been accomplished, is properly rejected where, although the lands described in the offer are shown on protraction diagrams on which "leasing blocks" have been designated, such lands have not been included within any such "leasing block" as they lie partially within two miles of Naval Petroleum Reserve No. 4, and are therefore not to be opened to leasing under the terms of PLO 3521.

William B. Murray and Chris Palzer, 7 IBLA 158 (Aug. 30, 1972)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Land included within an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an application filed for such land must be rejected.

An oil and gas lease offer for a section of land in Alaska, which comprises only a portion of a "leasing block" designated for leasing pursuant to the provisions of Public Land Order 3521, is unacceptable and must be rejected.

Bertil A. Granberg, 7 IBLA 162 (Aug. 31, 1972)

Where five copies of an approved form of the "Offer to Lease for Oil and Gas" are required by regulation, the requirement is not satisfied by filing four copies of the approved form and one machine reproduction of only the front of an offer form which was completed and signed prior to reproduction, and an offer so filed is properly rejected.

Duncan Miller, 7 IBLA 169 (Aug. 31, 1972)

Where by Public Land Order 3521 an area of public land has been declared to be unavailable for noncompetitive oil and gas leasing until certain steps have been taken, and the requisite steps have not been taken, the land is not subject to oil and gas leasing and an offer for it is properly rejected.

Bertil A. Granberg, 7 IBLA 174 (Sept. 1, 1972)

Oil and gas lease offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an offer earns no priority from the time of its filing. However, the offer(s) may be considered as being cured and having priority from the time that a supplemental statement is submitted, signed by the offeror and the other interested party, properly identifying him.

R. C. Bailey, et al., 7 IBLA 266 (Sept. 19, 1972)

Failure to submit the requisite number of signed copies of an offer to lease for oil and gas is a proper basis for rejection of the offer.

Thomas Connell, 7 IBLA 328 (Sept. 26, 1972)

An oil and gas lease offer is properly rejected where the filing fee check is returned from the bank for the reason: "Account closed," in the absence of any evidence that the bank erroneously dishonored the check.

Duncan Miller, 7 IBLA 343 (Sept. 26, 1972)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Oil and gas lease offers for lands in Alaska embraced within Public Land Order 3521 are properly rejected where the procedures described in said order as a prerequisite for leasing have not been carried out for the lands included in the offers.

Joseph MacIsaac, et al., 8 IBLA 51 (Oct. 12, 1972)

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications, or by a reference by serial number to a record in which such statement has previously been filed.

The Polumbus Corporation, 8 IBLA 84 (Nov. 2, 1972)

Where a simultaneous oil and gas drawing entry card contains the qualification file number of a corporation, the corporation's noncompetitive offer to lease for oil and gas should not be rejected because of a minor or typographical error in the corporate name.

Canso Oil & Gas, Inc., 8 IBLA 91 (Nov. 3, 1972)

Where the notice of sale by competitive bidding for oil and gas leases reserves to the Government the right to reject any and all bids, and further states any bonus bid considered as inadequate on the basis of the estimated value of the parcel will be rejected, a bonus bid of $1 per acre is properly rejected where the estimated value of the parcel is greater than $1 per acre.

Howell Spear, 8 IBLA 93 (Nov. 6, 1972)

Oil and gas offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an offer earns no priority from the time of its filing. However, the offer may be considered as being cured and having priority from the time that a supplemental statement is submitted, signed by the offeror and the other interested party, properly identifying him.

Helen S. Bailey, 8 IBLA 145 (Nov. 15, 1972)

An applicant who executes a noncompetitive oil and gas lease offer stating he accepts, as part of the lease, stipulations provided for in 43 CFR 191.6 (now 43 CFR 3109.4-2), is bound by such stipulations and such lease may not be rescinded on the ground he was not able to consider the stipulations.

Duncan Miller, 8 IBLA 285 (Dec. 6, 1972)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Oil and gas lease offers are properly rejected when each offer shows on its face that there are four offerors, each with a 25 percent interest, but three of the offerors cannot be identified from the face of the offer form because their names are represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an over-the-counter offer earns no priority from the time of its filing. However, in such over-the-counter offers, the defect may be considered as being cured and the offer having priority from the time that a supplemental statement is submitted, signed by the offerors, properly identifying each.

James D. Johnson, et al., 8 IBLA 348 (Dec. 11, 1972)

Amendments

Where an over-the-counter noncompetitive oil and gas lease offer is filed by a corporation unaccompanied by a statement of its qualifications or a reference by serial number to the record in which it has been filed, and such defect is remedied prior to the filing of any junior offer, the first offer may be considered with priority as of the date the curative data is filed.

Bear Creek Corporation, 5 IBLA 202 (Mar. 20, 1972)

Oil and gas lease offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an offer earns no priority from the time of its filing. However, the offer(s) may be considered as being cured and having priority from the time that a supplemental statement is submitted, signed by the offeror and the other interested party, properly identifying him.

R. C. Bailey, et al., 7 IBLA 266 (Sept. 19, 1972)

Oil and gas offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an offer earns no priority from the time of its filing. However, the offer may be considered as being cured and having priority from the time that a supplemental statement is submitted, signed by the offeror

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Amendments--Continued

and the other interested party, properly identifying him.

Helen S. Bailey, 8 IBLA 145 (Nov. 15, 1972)

Oil and gas lease offers are properly rejected when each offer shows on its face that there are four offerors, each with a 25 percent interest, but three of the offerors cannot be identified from the face of the offer form because their names are represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an over-the-counter offer earns no priority from the time of its filing. However, in such over-the-counter offers, the defect may be considered as being cured and the offer having priority from the time that a supplemental statement is submitted, signed by the offerors, properly identifying each.

James D. Johnson, et al., 8 IBLA 348 (Dec. 11, 1972)

Description

The description in an acquired lands oil and gas lease offer of a parcel of unsurveyed land without metes and bounds showing courses and distances between successive angle points and a tie by course and distance to a nearby official survey corner is defective, and a lease issued pursuant to the offer must be canceled where a junior offer properly describes the land in conformity with the regulations.

Arthur E. Meinhart, Irwin Rubenstein, Appellants, Bruce Anderson, Appellee, 6 IBLA 39 (May 12, 1972)

An oil and gas lease offer describing lands in Alaska by section numbers is properly rejected where the designated sections do not appear on the official protraction diagrams.

An oil and gas lease offer describing land in Alaska by block number, township and range is properly rejected where the designated block does not appear on the official protraction diagram, and where the land within the township, which would normally have been designated by the leasing block number described in the offer, lies within the Arctic National Wildlife Range and has not been approved for leasing by the Secretary of the Interior.

Gilbert Copper and Chris Palzer, Fairbanks Excavating and Trucking Company and Chris Palzer, 8 IBLA 11 (Oct. 3, 1972)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

Oil and gas lease offers for lands in Alaska which describe the lands applied for as certain sections or blocks within designated townships are properly rejected where the designated townships have not been subdivided in such manner on approved protraction diagrams.

Joseph MacIsaac, et al., 8 IBLA 51 (Oct. 12, 1972)

Drawings

A telegram withdrawing an offer for an oil and gas lease, received in a land office at a time when the office is not open to the public for the filing of documents, is deemed under 43 CFR § 1821.2-2(d) (1971) to have been filed as of the hour the office next opens to the public.

Under 43 CFR § 3110.1-6(b) (1971) a drawing to determine priorities for simultaneous oil and gas lease offers is only to be held where more than one simultaneous offer to lease a particular parcel has been filed.

Duncan Miller, 5 IBLA 35 (Feb. 24, 1972)

The regulation, 43 CFR 3112.1-1 (1972), prescribing that no oil and gas offers for lands in terminated or canceled leases will be received until the records have been noted and the lands have been posted in accordance with 3112.1-2 (1972) is a valid exercise of the Secretary's authority to prescribe rules and regulations under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 et seq. (1970).

Rose Mary Johnson, et al., 5 IBLA 279 (Apr. 13, 1972)

Where a properly filed card is inadvertently omitted from a drawing conducted under the oil and gas lease simultaneous drawing procedures, a new drawing will be conducted to include the omitted entry.

Craig Martin, 6 IBLA 37 (May 12, 1972)

Under 43 CFR 3110.1-6(b) a drawing to determine priorities for simultaneous oil and gas lease offers is to be held only where more than one simultaneous offer to lease a particular parcel is filed.

Duncan Miller, 7 IBLA 360 (Sept. 28, 1972)

Filing

A telegram withdrawing an offer for an oil and gas lease, received in a land office at a time when the office is not open to the public for the filing of documents, is deemed under 43 CFR § 1821.2-2(d) (1971) to have been filed as of the hour the office next opens to the public.

Duncan Miller, 5 IBLA 35 (Feb. 24, 1972)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

A person who files an oil and gas offer which is violative of applicable regulations acquires no rights thereby.

Rose Mary Johnson, et al., 5 IBLA 279 (Apr. 13, 1972)

Reinstatement

Where oil and gas lease offers indicate that there is an additional party in interest, and the required statements of the other party's qualifications are not filed within the time allowed, the offers are properly rejected. If such offers were filed pursuant to the simultaneous filing system, the defect is incurable and the rejection must be affirmed with finality, but where such offers are filed "over the counter" and the required statement of the other party's qualifications to hold such interests are subsequently submitted, the offers may be reinstated and allowed to earn priority from the time of filing of the missing statements.

Where nine separate oil and gas lease offers are filed, each indicating that there is a separate party in interest, but no statement of that party's qualifications to hold such an interest is filed, the defect will not be regarded as cured if, on appeal, a single copy of the statement of his qualifications is filed with the intent that it shall have blanket application to all of the several offers, and the Government will neither reproduce and distribute the necessary copies to the various case records, nor will it arbitrarily select one of the nine offers to be reinstated by the submission.

Thomas Connell, 7 IBLA 328 (Sept. 26, 1972)

640-Acre Limitation

No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation, or where the land is surrounded by lands not available for leasing, and where these circumstances do not exist an offer for less than 640 acres is properly rejected.

Duncan Miller, 7 IBLA 169 (Aug. 31, 1972)

Six-Mile Square Rule

An oil and gas lease offer describing widely scattered tracts of land, in violation of the six-mile square rule, must be rejected.

William B. Murray and Chris Palzer, 7 IBLA 158 (Aug. 30, 1972)

Sole Party in Interest

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

R. M. Barton, 4 IBLA 229 (Jan. 5, 1972)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statements of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time prescribed by the Department's regulations, the offer must be rejected.

Hiroshi Mizoguchi, 4 IBLA 249 (Jan. 12, 1972)

When a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest and the offeror is not precluded from stating that he is the sole party in interest in the offer.

R. M. Barton, 5 IBLA 1 (Feb. 17, 1972)

Where an oil and gas lease offer, filed on a drawing entry card in a simultaneous filing procedure, contains the name of a party in interest other than the offeror, and the required statement of interest, copy of explanation of the agreement between the parties, and evidence of the qualifications of the additional party to hold such interest are not filed within the time allowed by the Department's regulations, the offer is properly rejected. The fact that the other party is the offeror's wife or that the statement is filed with the appeal cannot change the result.

Eugene Prato, 5 IBLA 87 (Mar. 6, 1972)

An oil and gas lease applicant is not precluded from stating that he is the sole party in interest where he filed through a leasing service and there is no enforceable agreement entered into whereby the applicant is obligated to transfer any interest in the lease if or when a lease issues.

R. M. Barton, 7 IBLA 68 (Aug. 11, 1972)

Where oil and gas lease offer forms show that the offeror is not the sole party in interest, and the offers are each accompanied by machine reproductions of a document signed by the offeror and the other party which sets forth the nature and extent of the interest of each party but contains no evidence of

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

the second party's qualifications to hold such lease or interests therein, and such a showing is not made within the 15 day period prescribed by regulation, the submission is inadequate to satisfy the mandatory requirement, and the offers are properly rejected.

Where oil and gas lease offers indicate that there is an additional party in interest, and the required statements of the other party's qualifications are not filed within the time allowed, the offers are properly rejected. If such offers were filed pursuant to the simultaneous filing system, the defect is incurable and the rejection must be affirmed with finality, but where such offers are filed "over the counter" and the required statement of the other party's qualifications to hold such interests are subsequently submitted, the offers may be reinstated and allowed to earn priority from the time of filing of the missing statements.

Where nine separate oil and gas lease offers are filed, each indicating that there is a separate party in interest, but no statement of that party's qualifications to hold such an interest is filed, the defect will not be regarded as cured if, on appeal, a single copy of the statement of his qualifications is filed with the intent that it shall have blanket application to all of the several offers, and the Government will neither reproduce and distribute the necessary copies to the various case records, nor will it arbitrarily select one of the nine offers to be reinstated by the submission.

Thomas Connell, 7 IBLA 328 (Sept. 26, 1972)

ASSIGNMENTS OR TRANSFERS

A request for approval of a partial assignment of an oil and gas lease is incomplete until all items required by the statute to be filed with such request, including any required bond, have been filed and an incomplete application is properly rejected when it is too late to complete the application in time to permit its approval.

For a lease to become segregated through partial assignment and entitled to the extension authorized for segregated leases a partial assignment affecting the lease must be filed while there is one month remaining to the lease term; where the requirements for filing a partial assignment of a noncompetitive lease are not met before the end of the next to the last month of the lease term the assignment cannot be approved.

Robert N. and Mona Enfield, Robert G. Hanagan, 4 IBLA 317 (Feb. 10, 1972)

For leases to become segregated through assignment, and thus entitled to the extension authorized for segregated leases, an assignment must be filed when there is at least one lease month remaining in the term of the lease. A partial assignment filed during the last month of the lease term cannot become effective to segregate the lease and to entitle the segregated portions to any extension.

John L. Kemmerer, Jr., 5 IBLA 361 (Apr. 19, 1972)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Where approval is sought for partial assignment of an acquired lands oil and gas lease of less than a quarter-quarter section, the assignment is of less than a legal subdivision under 43 CFR 3106.3-2 (1972) and there must be clear and convincing evidence of the necessity thereof or approval is properly refused.

Dictum: Where a communitization agreement approved by the Geological Survey segregates a uncommunitized parcel of less than a quarter-quarter section, the required necessity for an assignment of the parcel under 43 CFR 3106.3-2 (1972) would be established.

James P. Witmer, 7 IBLA 366 (Sept. 29, 1972)

BONA FIDE PURCHASER

The purchaser of an assignment of an oil and gas lease is presumed to have knowledge of the date and terms of the lease and its status at the time of the assignment. If he does not, he is put on inquiry.

Tenneco Oil Company, 7 IBLA 151 (Aug. 29, 1972)

BONDS

A request for approval of a partial assignment of an oil and gas lease is incomplete until all items required by the statute to be filed with such request, including any required bond, have been filed and an incomplete application is properly rejected when it is too late to complete the application in time to permit its approval.

Robert N. and Mona Enfield, Robert G. Hanagan, 4 IBLA 317 (Feb. 10, 1972)

Where all of the lands in an oil and gas lease have been committed to a unit agreement and thereafter some of the lands in the lease are committed to another unit agreement, resulting in a segregated producing lease, each person holding a record title interest, however minimal, in the segregated producing lease is properly required to file a $10,000 lease bond, or to join as co-principal with other record titleholders on such a bond.

Robert C. Brown, Ann M. Brown, 6 IBLA 346 (July 24, 1972)

CANCELLATION

Where land not owned by the United States has been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled as only land owned by the United States is subject to leasing under that Act.

Duncan Miller, 5 IBLA 21 (Feb. 22, 1972)

The description in an acquired lands oil and gas lease offer of a parcel of unsurveyed land without metes and bounds showing courses and distances between successive angle points and a tie by

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

course and distance to a nearby official survey corner is defective, and a lease issued pursuant to the offer must be canceled where a junior offer properly describes the land in conformity with the regulations.

Arthur E. Meinhart, Irwin Rubenstein, Appellants, Bruce Anderson, Appellee, 6 IBLA 39 (May 12, 1972)

Where land included in an existing oil and gas lease is known to contain valuable deposits of oil and gas, the lease may not be canceled administratively by the Department but may be canceled only by judicial proceedings. 30 U.S.C. § 184 (1970); 43 CFR 3108.3.

Dictum: With regard to cancellation of an oil or gas lease, the terms "known geologic structure" and "known to contain valuable deposits of oil or gas" could be distinguished on the basis that the presumptive productivity referred to in the definition of known geologic structure may be a matter of expert opinion, whereas the words "known to contain valuable deposits" connote matters of actual fact. 43 CFR 3100.0-5 and 3108.3.

James W. Smith, 6 IBLA 318 (July 13, 1972) 79 I.D. 439

COMMUNITIZATION AGREEMENTS

Where the Geological Survey requests some 3 months prior to the termination date of lease a party seeking a proposed communitization agreement to file a necessary document therefor, and such party does not file the document until some 10 months after such request, the lease will be deemed to have terminated according to its normal term.

Kirkpatrick Oil & Gas Company, Beard Oil Company, John M. Beard, Bruce Anderson, 8 IBLA 108 (Nov. 13. 1972)

COMPETITIVE LEASES

Where the notice of competitive bidding for upland oil and gas leases reserves to the Government the right to reject any and all bids and further states that any bonus bid considered as inadequate on the basis of the estimated value of the parcel will be rejected, a bonus bid of $10.95 per acre for land, whose oil and gas bonus value is estimated to be $20 per acre, may properly be rejected.

John M. Kelly, 5 IBLA 324 (Apr. 17, 1972)

Where an invitation to submit competitive bids for oil and gas leases reserves the right and discretion to reject any and all bids, regardless of the amount offered, and the high bid for a particular tract is much less than the government's estimated value of the tract, the high bid may properly be rejected for the

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

reason of inadequacy of the cash bonus offered.

Kerr McGee Corporation, Cabot Corporation, Felmont Oil Corporation, Case-Pomeroy Oil Corporation, 6 IBLA 108 (June 5, 1972)

A decision rejecting a bid for an Outer Continental Shelf Lands Act oil and gas lease will be set aside where the bid met two of three criteria used by the manager to evaluate bids, and the third one was improperly imposed.

Tipperary Land & Exploration Corporation, 7 IBLA 270 (Sept. 19, 1972) 79 I.D. 596

Where an invitation to submit competetive bids for oil and gas leases reserves the right and discretion to reject any and all bids, regardless of the amount offered, and the high bid for a particular tract is less than 10 percent of the Government's estimated value of the tract, the high bid may properly be rejected for the reason of inadequacy of the cash bonus offered.

Antoine "Fats" Domino, 7 IBLA 375 (Sept. 29, 1972)

Where the notice of sale by competitive bidding for oil and gas leases reserves to the Government the right to reject any and all bids, and further states any bonus bid considered as inadequate on the basis of the estimated value of the parcel will be rejected, a bonus bid of $1 per acre is properly rejected where the estimated value of the parcel is greater than $1 per acre.

Howell Spear, 8 IBLA 93 (Nov. 6, 1972)

CONSENT OF AGENCY

The Board adheres to its decision in Quantex Corporation et al., 78 I.D. 317 (1971), that applicants for oil and gas leases must give written acceptance of reasonable special stipulations requested by the Bureau of Land Management relating to protection of the land and surface resources under its jurisdiction and to stipulations governing use of lands in the oil shale area of Utah as conditions precedent to issuance of noncompetitive public domain oil and gas leases.

Geocon, Inc. and Cameo Minerals, Inc. et al., 5 IBLA 91 (Mar. 6, 1972)

The board adheres to its decision in Quantex Corporation et al., 78 I.D. 317 (1971), that applicants for oil and gas leases must give written acceptance to reasonable special stipulations requested by the Bureau of Land Management relating to protection of the land and surface resources under its jurisdiction and to stipulations governing use of lands in the oil shale area of Utah as conditions precedent to issuance of noncompetitive public domain oil and gas leases.

Bob Owen White, et al., 5 IBLA 229 (Mar. 22, 1972)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease. The applicant, rather than this Department, must seek any modification or qualification of the stipulation from such agency.

Duncan Miller, 5 IBLA 364 (Apr. 19, 1972)

Although statute requires the consent of the agency administering the surface of acquired federal lands and an applicant for an oil and gas lease must execute any special stipulations required by such agency as a condition to the issuance of the lease, where an oil and gas lease offer is made for available public lands which have been withdrawn the determination to lease or not to lease is properly made by the Department of the Interior and it may adopt and incorporate special stipulations proposed by the agency administering the surface and require the offeror to agree thereto, or it may decline to adopt any such proposed stipulations and issue the lease without them. Proposed special lease stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest.

Duncan Miller, 6 IBLA 216 (June 22, 1972)
79 I.D. 416

Special stipulations requested by the Forest Service on public domain lands will not be imposed where the proposed stipulations are not supported by valid reasons.

Ida Lee Anderson, et al., 6 IBLA 314 (July 12, 1972)

DESCRIPTION OF LAND

Where an offeror for an oil and gas lease seeks to avail himself of a provision of a regulation which permits him to describe lands by "acquisition tract number," and where that term has not been defined, he will not be held to have lost his statutory preference right for failure to comply with the regulation if the numbers given may reasonably be regarded as "acquisition tract numbers" and the description thereby afforded is accurate for the purpose.

Arthur E. Meinhart, Irwin Rubenstein, Appellants Pan American Petroleum Corp., Appellee, 5 IBLA 345 (Apr. 18, 1972)

The description in an acquired lands oil and gas lease offer of a parcel of unsurveyed land without metes and bounds showing courses and distances between successive angle points and a tie by course and distance to a nearby official survey corner is defective, and a lease issued pursuant to the offer must be canceled where a junior offer properly describes the land in conformity with the regulations.

Arthur E. Meinhart, Irwin Rubenstein, Appellants, Bruce Anderson, Appellee, 6 IBLA 39 (May 12, 1972)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

An oil and gas lease offer describing lands in Alaska by section numbers is properly rejected where the designated sections do not appear on the official protraction diagrams.

An oil and gas lease offer describing land in Alaska by block number, township and range is properly rejected where the designated block does not appear on the official protraction diagram, and where the land within the township, which would normally have been designated by the leasing block number described in the offer, lies within the Arctic National Wildlife Range and has not been approved for leasing by the Secretary of the Interior.

Gilbert Copper and Chris Palzer, Fairbanks Excavating and Trucking Company and Chris Palzer, 8 IBLA 11 (Oct. 3, 1972)

Oil and gas lease offers for lands in Alaska which describe the lands applied for as certain sections or blocks within designated townships are properly rejected where the designated townships have not been subdivided in such manner on approved protraction diagrams.

Joseph MacIsaac, et al., 8 IBLA 51 (Oct. 12, 1972)

DISCRETION TO LEASE

Where the Secretary of the Interior determines not to lease a certain area of the public lands for oil and gas pending a study of the impact of oil and gas leasing on the California condor, an endangered species, that determination is based upon consideration of the public interest, and his exercise of discretion in the matter is neither arbitrary nor capricious.

Jack E. Griffin, 7 IBLA 155 (Aug. 30, 1972)

Lands constituting the bed or bank or within a quarter mile of a river which is listed as a potential addition to the national wild and scenic system are not withdrawn from mineral leasing but are subject to the Secretary's discretionary authority in issuance of leases and the Secretary may refuse to issue oil and gas leases where such lands have been inadvertently listed for leasing.

Signal Oil & Gas Co., 8 IBLA 14 (Oct. 5, 1972)

Lands constituting the bed or bank or within a quarter mile of the bank of a river which is listed as a potential addition to the national wild and scenic river system are not withdrawn from mineral leasing but are subject to the Secretary's discretionary authority in issuance of leases and the Secretary may refuse to issue oil and gas leases where such lands have been inadvertently listed for leasing.

Signal Oil & Gas Co., 8 IBLA 150 (Nov. 20, 1972)

OIL AND GAS LEASES--Continued

DRILLING

Actual drilling operations on an oil and gas lease, commenced during or after a period when a lease exists only by reason of its commitment to a productive unit, are not a sufficient basis for invoking the two-year extension under 30 U.S.C. § 226-1(d) (1970).

Ashland Oil, Inc., et al., 7 IBLA 58 (Aug. 9, 1972) 79 I.D. 532

EXTENSIONS

For a lease to become segregated through partial assignment and entitled to the extension authorized for segregated leases a partial assignment affecting the lease must be filed while there is one month remaining to the lease term; where the requirements for filing a partial assignment of a noncompetitive lease are not met before the end of the next to the last month of the lease term the assignment cannot be approved.

Robert N. and Mona Enfield, Robert G. Hanagan, 4 IBLA 317 (Feb. 10, 1972)

For leases to become segregated through assignment, and thus entitled to the extension authorized for segregated leases, an assignment must be filed when there is at least one lease month remaining in the term of the lease. A partial assignment filed during the last month of the lease term cannot become effective to segregate the lease and to entitle the segregated portions to any extension.

John L. Kemmerer, Jr., 5 IBLA 361 (Apr. 19, 1972)

Where an appeal is taken from a decision denying an extension of oil and gas leases, and the period of the requested extension has expired, the appeal is moot and is dismissed.

Ashland Oil, Inc. et al., 6 IBLA 187 (June 15, 1972)

When it is adjudged that an oil and gas lease, extended because of production, no longer has any well capable of producing oil or gas in paying quantities, the lease terminates by operation of law if within 60 days after cessation of production, no reworking or drilling operations are begun on the lease.

Where production from a lease ceases because the well is no longer capable of production of oil or gas in paying quantities, the lessee is not entitled to the benefits of the provision in section 17 of the Mineral Leasing Act which provides that no lease on which there is a well capable of production shall expire because the lessee fails to produce it unless the lessee is allowed 60 days after notice to place the well on a producing status.

Max Barash, Marvin J. Sonosky, William R. Noble, Joseph T. King, 6 IBLA 179 (June 15, 1972)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

An oil and gas lease which has been extended and has vitality only by reason of its inclusion in a producing unit is not within its "primary term" within the ambit of 30 U.S.C. § 226-1(d) (1970).

"Primary term" in that context includes all definite and finite periods of extension fixed by law. It does not include any period of time whose termination depends upon the occurrence or nonoccurrence of a contingency, e.g., the cessation or continuation of production.

Actual drilling operations on an oil and gas lease, commenced during or after a period when a lease exists only by reason of its commitment to a productive unit, are not a sufficient basis for invoking the two-year extension under 30 U.S.C. § 226-1(d) (1970).

Ashland Oil, Inc., et al., 7 IBLA 58 (Aug. 9, 1972) 79 I.D. 532

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal.

Anne Burnett Tandy, et al., 7 IBLA 356 (Sept. 28, 1972)

A lease upon which production is obtained while it is within any fixed term of years does not, by reason of that fact, become a lease for the life of production, but remains a lease for a fixed term of years until the end of that fixed term.

Commitment to a unit agreement of a portion of a lease on which there is production, during the fixed term of the lease, will not extend the uncommitted, nonproducing segregated lease beyond the fixed term of years for the original lease or two years from the date of commitment, whichever is longer.

The segregated lease embracing nonproducing lands uncommitted to an approved unit agreement will continue for the fixed term of the original lease or for two years from date of segregation, whichever is the longer.

United States Smelting Refining & Mining Company, 8 IBLA 354 (Dec. 11, 1972)

FIRST QUALIFIED APPLICANT

The description in an acquired lands oil and gas lease offer of a parcel of unsurveyed land without metes and bounds showing courses and distances between successive angle points and a tie by course and distance to a nearby official survey corner is defective, and a lease issued pursuant to the offer must be canceled where a junior offer properly describes the land in conformity with the regulations.

Arthur E. Meinhart, Irwin Rubenstein, Appellants, Bruce Anderson, Appellee, 6 IBLA 39 (May 12, 1972)

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT--Continued

A simultaneously filed oil and gas lease offer which gain priority at a public drawing is properly rejected in its entirety when it is discovered that the offer was jointly made by two persons, one of whom is an employee of the Department of the Interior who is prohibited from voluntarily acquiring any interest in the lands or resources administered by the Bureau of Land Management, and although the other joint offeror is apparently a qualified individual, that fact cannot operate either to validate the offer as presented or to require that it be divided so as to separate the interest of the qualified individual from that of the unqualified individual.

Carmen M. Luna, 6 IBLA 176 (June 15, 1972)

Oil and gas lease offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an offer earns no priority from the time of its filing. However, the offer(s) may be considered as being cured and having priority from the time that a supplemental statement is submitted, signed by the offeror and the other interested party, properly identifying him.

R. C. Bailey, et al., 7 IBLA 266 (Sept. 19, 1972)

Oil and gas offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an offer earns no priority from the time of its filing. However, the offer may be considered as being cured and having priority from the time that a supplemental statement is submitted, signed by the offeror and the other interested party, properly identifying him.

Helen S. Bailey, 8 IBLA 145 (Nov. 15, 1972)

Oil and gas lease offers are properly rejected when each offer shows on its face that there are four offerors, each with a 25 percent interest, but three of the offerors cannot be identified from the face of the offer form because their names are represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an over-the-counter offer earns no priority from the time of its filing.

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT--Continued

However, in such over-the-counter offers, the defect may be considered as being cured and the offer having priority from the time that a supplemental statement is submitted, signed by the offerors, properly identifying each.

James D. Johnson, et al., 8 IBLA 348 (Dec. 11, 1972)

KNOWN GEOLOGICAL STRUCTURE

"Known geologic structure." The term "known geologic structure of a producing oil or gas field," as used in 43 CFR § 3125.1(b) (1970), now 43 CFR 3103.3-2(b) (1971) has been defined as the trap, whether structural or stratigraphic, in which an accumulation of oil and gas has taken place, and in which there has been production. It includes all acreage that is presumptively productive.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the known geological structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

The determination of the boundary lines of the known geologic structure of a producing oil or gas field or of an undefined addition to such field does not guarantee the productiveness of the area so designated.

In the absence of a clear and definite showing that it was improperly made, the Geological Survey's definition of a known geological structure of a producing oil or gas field will not be disturbed. Increase in the rental rate of an oil and gas lease, based upon such definition, is sustained.

McClure Oil Company, 4 IBLA 255 (Jan. 13, 1972)

Notice given in 1967 that an oil and gas lease is subject to increased rental because of inclusion of some of its lands in a known geologic structure of a producing oil or gas field is considered to be adequate notice that a lease segregated therefrom in 1970, containing some lands on such known geologic structure, is also subject to payment of the increased rental.

Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 7 (Feb. 18, 1972) 79 I.D. 17

Dictum: With regard to cancellation of an oil or gas lease, the terms "known geologic structure" and "known to contain valuable deposits of oil or gas" could be distinguished on the basis that the presumptive productivity referred to in the definition of known geologic structure may be a matter of expert opinion, whereas the words "known to contain valuable deposits" connote matters of actual fact. 43 CFR 3100.0-5 and 3108.3.

James W. Smith, 6 IBLA 318 (July 13, 1972) 79 I.D. 439

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO

An oil and gas lease offer filed for lands which are at that time withdrawn for Indian purposes by an Executive Order properly rejected. Such an offer is nugatory and cannot be given life, even by a subsequent restoration of the lands.

M. F. Trask, 4 IBLA 252 (Jan. 13, 1972)

Where an oil and gas lease offer is rejected as to a tract of land for the reason that the tract has been patented, the case will be remanded for further consideration of the offer where the land office records do not clearly indicate that a patent does cover such land.

Georgette B. Lee, 5 IBLA 295 (Apr. 13, 1972)

Lands within the Naval Petroleum Reserves are not subject to oil and gas leasing under the Mineral Leasing Act of 1920.

Starling Brokers, et al., 6 IBLA 237 (June 26, 1972)

Oil and gas lease offers for lands embraced within Public Land Order 3521, which provides that none of the public lands within the area shall be subject to oil and gas leasing until certain procedures, including the preparation of approved leasing maps, have been accomplished, are properly rejected where, although the lands described in the offers are shown on protraction diagrams on which leasing "blocks" have been designated, such lands have not been included within any such leasing blocks and they lie within two miles of Naval Petroleum Reserve No. 4, and are therefore not to be opened to leasing under the terms of PLO 3521.

Chris Palzer, et al., 6 IBLA 248 (June 27, 1972)

A regulation, 43 CFR 2013.2-4(1970), now substantially embodied in 43 CFR 2091.2-3 (1972), which provides that the filing of a valid application for state exchange segregates the selected lands from the filing of applications, the allowance of which is discretionary, is effective to preclude the acceptance of such applications.

Tom B. Boston, 6 IBLA 269 (June 29, 1972)

Where an application for a preference right oil and gas lease is filed for land included in an outstanding oil and gas lease of record, the application must be rejected because the land is segregated by that lease--whether the outstanding lease is valid, void or voidable.

James W. Smith, 6 IBLA 318 (July 13, 1972)
79 I.D. 439

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not been posted as available for filing as prescribed by 43 CFR Subpart 3112.

Jack E. Griffin, 7 IBLA 155 (Aug. 30, 1972)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Lands within Naval Petroleum Reserve No. 4 are not subject to oil and gas leasing under the Mineral Leasing Act of 1920.

An oil and gas lease offer is properly rejected as to land formerly included in a lease which terminated by operation of law, where the land had not been posted as available for filing in accordance with 43 CFR Subpart 3112 (1972).

An oil and gas lease offer for lands embraced within Public Land Order 3521 which provides that none of the public lands within the area shall be subject to oil and gas leasing until certain procedures, including the preparation of approved leasing maps, have been accomplished, is properly rejected where, although the lands described in the offer are shown on protraction diagrams on which "leasing blocks" have been designated, such lands have not been included within any such "leasing block" as they lie partially within two miles of Naval Petroleum Reserve No. 4, and are therefore not to be opened to leasing under the terms of PLO 3521.

William B. Murray and Chris Palzer, 7 IBLA 158 (Aug. 30, 1972)

Land included within an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an application filed for such land must be rejected.

An oil and gas lease offer for a section of land in Alaska, which comprises only a portion of a "leasing block" designated for leasing pursuant to the provisions of Public Land Order 3521, is unacceptable and must be rejected.

Bertil A. Granberg, 7 IBLA 162 (Aug. 31, 1972)

Where by Public Land Order 3521 an area of public land has been declared to be unavailable for noncompetitive oil and gas leasing until certain steps have been taken, and the requisite steps have not been taken, the land is not subject to oil and gas leasing and an offer for it is properly rejected.

Bertil A. Granberg, 7 IBLA 174 (Sept. 1, 1972)

An oil and gas lease offer describing land in Alaska by block number, township and range is properly rejected where the designated block does not appear on the official protraction diagram, and where the land within the township, which would normally have been designated by the leasing block number described in the offer, lies within the Arctic National Wildlife Range and has not been approved for leasing by the Secretary of the Interior.

Gilbert Copper and Chris Palzer, Fairbanks Excavating and Trucking Company and Chris Palzer, 8 IBLA 11 (Oct. 3, 1972)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Lands constituting the bed or bank or within a quarter mile of a river which is listed as a potential addition to the national wild and scenic system are not withdrawn from mineral leasing but are subject to the Secretary's discretionary authority in issuance of leases and the Secretary may refuse to issue oil and gas leases where such lands have been inadvertently listed for leasing.

Signal Oil & Gas Co., 8 IBLA 14 (Oct. 5, 1972)

Oil and gas lease offers for lands in Alaska embraced within Public Land Order 3521 are properly rejected where the procedures described in said order as a prerequisite for leasing have not been carried out for the lands included in the offers.

Joseph MacIsaac, et al., 8 IBLA 51 (Oct. 12, 1972)

Lands constituting the bed or bank or within a quarter mile of the bank of a river which is listed as a potential addition to the national wild and scenic river system are not withdrawn from mineral leasing but are subject to the Secretary's discretionary authority in issuance of leases and the Secretary may refuse to issue oil and gas leases where such lands have been inadvertently listed for leasing.

Signal Oil & Gas Co., 8 IBLA 150 (Nov. 20, 1972)

A rejection of an oil and gas lease offer for the reason that it embraced lands "patented without mineral reservation" is properly vacated and the case remanded where title to the tract has not passed out of federal ownership.

Battle Mountain Wild Cat, Inc., 8 IBLA 157 (Nov. 22, 1972)

An oil and gas lease offer filed for lands which at the time of filing have been withdrawn for Indian purposes by an Executive Order is properly rejected.

Tenneco Oil Co., 8 IBLA 282 (Dec. 6, 1972)

Lands withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and reserved for selection by a Regional Corporation pursuant to the Alaska Native Claims Settlement Act are not available for leasing under the Mineral Leasing Act of 1920 and an oil and gas lease offer for such land is properly rejected although filed prior to the withdrawal.

James D. Johnson, et al., 8 IBLA 348 (Dec. 11, 1972)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not been posted as available for filing as prescribed by 43 CFR Subpart 3112.

Jack E. Griffin, 7 IBLA 155 (Aug. 30, 1972)

PREFERENCE RIGHT LEASES

Where an application for a preference right oil and gas lease is filed for land included in an outstanding oil and gas lease of record, the application must be rejected because the land is segregated by that lease--whether the outstanding lease is valid, void or voidable.

James W. Smith, 6 IBLA 318 (July 13, 1972) 79 I.D. 439

PRODUCTION

A lease which is in its extended term because of production terminates upon cessation of production if reworking or drilling operations are not commenced upon the leasehold within 60 days thereafter and conducted with reasonable diligence during the period of nonproduction.

Where the appropriate state agency approves abandonment of a well as of a date certain, marking the cessation of production, and a federal employee later notifies a person interested in the oil and gas lease that he has 60 days from a later date, erroneously construed by such employee to be the date of such cessation, within which to commence drilling or reworking operations, such notification will not be construed as creating any rights.

R. E. Hibbert, 8 IBLA 379 (Dec. 12, 1972)

REINSTATEMENT

An oil and gas lease automatically terminates in accordance with the Act of July 29, 1954, where rental is not paid on or before the anniversary date of the lease, and the lease may not be reinstated if the amendatory relief provisions of the Act of May 12, 1970, 30 U.S.C. § 188(b) (1970), are not applicable.

Robert P. Good, 6 IBLA 233 (June 22, 1972)

There is no authority in the Secretary of the Interior to reinstate an oil and gas lease which has been relinquished.

Roy W. Reed, 7 IBLA 321 (Sept. 25, 1972)

Under the provisions of P.L. 91-245, amending § 31 of the Mineral Leasing Act, 30 U.S.C. § 188, reinstatement is properly granted where the lessee shows that the rental payment was mailed sufficiently in advance of the due date so that in the normal course of events the payment would have arrived prior to or on the anniversary date, even though the payment was not received until after that date.

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Failure to timely pay the advance rental on an oil and gas lease will be deemed "justifiable" where the failure is the result of sufficiently extenuating circumstances which affected the lessee's actions.

R. G. Price, et al., 8 IBLA 290 (Dec. 6, 1972)

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental as required by section 31, Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188 (1970), where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligency, as set forth in P.L. 91-245, Act of May 12, 1970.

Louis Samuel, et al., 8 IBLA 268 (Dec. 6, 1972)

Failure of a lessee to pay rental on or before the anniversary date of a lease, on which there is no well capable of producing oil or gas in paying quantities, results in the automatic termination of the lease by operation of law. A lease so terminated may be reinstated only if the terms and conditions of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970) have been satisfied.

An applicant asserting a claim to benefits of an Act of Congress has the burden of furnishing sufficient evidence of his entitlement thereto. Failure to submit such evidence will result in the denial of his claim. Where an applicant seeks reinstatement of his oil and gas lease under the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970), he has the burden of establishing by persuasive evidence that the failure to pay his full rental timely was either justifiable or not due to a lack of reasonable diligence. Mere assertions, unsupported by any probative evidence, are not sufficient.

James E. Fowler and Frances T. Fowler, 8 IBLA 372 (Dec. 12, 1972)

RELINQUISHMENTS

One who voluntarily surrenders his oil and gas lease, by filing a written relinquishment thereof in the appropriate BLM office, cannot withdraw his relinquishment.

Roy W. Reed, 7 IBLA 321 (Sept. 25, 1972)

RENEWALS

Upon being committed to a unit agreement, the right of renewal of a 20-year oil and gas lease is superseded by that part of the Mineral Leasing Act, 30 U.S.C. § 226 para. (j) (1970), which provides for extension of unitized leases.

Martin Yates, III, et al., 7 IBLA 261 (Sept. 15, 1972)

OIL AND GAS LEASES--Continued

RENEWALS--Continued

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal.

Anne Burnett Tandy, et al., 7 IBLA 356 (Sept. 28, 1972)

RENTALS

In the absence of a clear and definite showing that it was improperly made, the Geological Survey's definition of a known geological structure of a producing oil or gas field will not be disturbed. Increase in the rental rate of an oil and gas lease, based upon such definition, is sustained.

McClure Oil Company, 4 IBLA 255 (Jan. 13, 1972)

Where a producing oil and gas lease is partially committed to a unit agreement and the segregated uncommitted lands do not contain a well capable of producing oil or gas in paying quantities, the segregated lease is subject to payment of annual rental on or before the anniversary date of the lease. Where the lessee is not informed of approval of the unit agreement and segregation of the uncommitted lands into a new lease effective April 1, 1970, and the lessee did not receive notice until some five weeks thereafter of such actions and subsequent to anniversary date of the lease, May 1, 1970, the segregated lease is not automatically terminated under 30 U.S.C. § 188 (1970), for failure to pay the annual rental on or before the anniversary date of the lease.

Notice given in 1967 that an oil and gas lease is subject to increased rental because of inclusion of some of its lands in a known geologic structure of a producing oil or gas field is considered to be adequate notice that a lease segregated therefrom in 1970, containing some lands on such known geologic structure, is also subject to payment of the increased rental.

Congress intended that the automatic termination provision of 30 U.S.C. § 188 (1970) apply to the regular, annual rental payment, the necessity for which a lessee had continuous notice and that provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued.

Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 7 (Feb. 18, 1972) 79 I.D. 17

The failure to pay annual rental on or before the anniversary date for an oil and gas lease, segregated from a producing lease because of partial commitment to an approved unit agreement effective at 7 a.m. on that anniversary date, does not cause the segregated lease to terminate by operation of law under 30 U.S.C. § 188 (1970).

OIL AND GAS LEASES--Continued

RENTALS--Continued

Congress intended that the automatic termination provision of 30 U.S.C. § 188 (1970) apply to the regular annual rental payment the necessity for which a lessee had continuous notice. That provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued.

Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 16 (Feb. 18, 1972) 79 I.D. 21

Where only a portion of the lands in a unitized oil and gas lease is eliminated from the unit, the leased lands are situated in whole or in part on the known geologic structure of a producing oil or gas field, and the lease terms and factual circumstances are identical to those in the decision, Standard Oil Company of California et al., 76 I.D. 271 (1969), this Department will follow the ruling by the United States Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Morton, 450 F.2d 493 (1971), which overturned that decision solely upon principles of contract construction; therefore, the eliminated lands will retain the rental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to non-unitized lands within a known geologic structure.

Standard Oil Company of California and Atlantic Richfield Company, 5 IBLA 26 (Feb. 22, 1972) 79 I.D. 23

The regulations requiring that advance rental payment and filing fee must accompany the offer cannot be satisfied by a check returned by the bank as uncollectible; nor is a substitute check filed without adequate explanation sufficient to avert or reverse cancellation of the lease.

Charles F. Mullins, 6 IBLA 184 (June 15, 1972)

An oil and gas lease automatically terminates in accordance with the Act of July 29, 1954, where rental is not paid on or before the anniversary date of the lease, and the lease may not be reinstated if the amendatory relief provisions of the Act of May 12, 1970, 30 U.S.C. § 188(b) (1970), are not applicable.

Robert P. Good, 6 IBLA 233 (June 22, 1972)

A protest of a successful drawee's offer in a simultaneous drawing, for the reason that the advance rental payment required under 43 CFR 3112.2-1(a) was submitted in the form of a corporate or other private commercial money order, is properly dismissed where it is determined that such a money order is an acceptable remittance within the meaning of the term "money order" as used in the regulation.

R. M. Barton, 7 IBLA 68 (Aug. 11, 1972)

A protest of a successful drawee's offer in a simultaneous drawing, for the reason that the advance rental payment required under 43 CFR 3112.2-1(a) was submitted in the form of a corporate or other private commercial money order, is properly dismissed where it is determined that such a money order is an acceptable remittance within the meaning of the term "money order" as used in the regulation.

R. M. Barton, 7 IBLA 230 (Sept. 12, 1972)

Where only a portion of the lands in a unitized oil and gas lease is eliminated fron the unit, the leased lands are situated in whole or in part on a known geologic structure of a producing oil or gas field, and the lease terms and factual circumstances are identical to those in the decision, Standard Oil Company of California, et al., 76 I.D. 271 (1969), this Department will follow the ruling by the United States Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Morton, 450 F.2d 493 (1971), which overturned that decision solely upon principles of contract construction; therefore, the eliminated lands will retain the rental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to non-unitized lands within a known geologic structure.

Standard Oil Company of California, 7 IBLA 345 (Sept. 27, 1972)

Oil and gas leases automatically terminate under the Act of July 29, 1954, 68 Stat. 585, 30 U.S.C. § 188(b) (1970) where lessees fail to pay rental on or before the anniversary date of their leases, and the Secretary is without authority to grant relief from the provisions of the statute where lessees have not made the rental payments.

Cayman Corporation and Shenandoah Oil Corporation, 8 IBLA 248 (Nov. 30, 1972)

Under the provisions of P.L. 91-245, amending § 31 of the Mineral Leasing Act, 30 U.S.C. § 188, reinstatement is properly granted where the lessee shows that the rental payment was mailed sufficiently in advance of the due date so that in the normal course of events the payment would have arrived prior to or on the anniversary date, even though the payment was not received until after that date.

Failure to timely pay the advance rental on an oil and gas lease will be deemed "justifiable" where the failure is the result of sufficiently extenuating circumstances which affected the lessee's actions.

R. G. Price, et al., 8 IBLA 290 (Dec. 6, 1972)

Failure of a lessee to pay rental on or before the anniversary date of a lease, on which there is no well capable of producing oil or gas in paying quantities, results in the automatic termination of the lease by operation of law. A lease so terminated may be reinstated only if the terms and conditions of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970) have been satisfied.

OIL AND GAS LEASES--Continued

RENTALS--Continued

An applicant asserting a claim to benefits of an Act of Congress has the burden of furnishing sufficient evidence of his entitlement thereto. Failure to submit such evidence will result in the denial of his claim. Where an applicant seeks reinstatement of his oil and gas lease under the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970), he has the burden of establishing by persuasive evidence that the failure to pay his full rental timely was either justifiable or not due to a lack of reasonable diligence. Mere assertions, unsupported by any probative evidence, are not sufficient.

James E. Fowler and Frances T. Fowler, 8 IBLA 372 (Dec. 12, 1972)

SUSPENSIONS

Applications by lessees for relief of producing requirements must be made to the regional oil and gas supervisor of the Geological Survey. No suspension of operations and production will be granted on any lease in the absence of a well capable of production except when the Secretary directs a suspension in the interest of conservation.

This Department is not authorized to suspend a noncompetitive oil and gas lease so as to revive and extend the lease term.

Duncan Miller, 6 IBLA 283 (June 30, 1972)

TERMINATION

Where an unit agreement was approved February 25, 1971, and terminated effective July 1, 1971, a lease holder within the unit agreement boundaries who had been afforded the opportunity to join the unit, but did not do so by signing the agreement or by subsequent joinder prior to the termination of the unit, is not entitled to the 2-year extension afforded by 30 U.S.C. § 226(j) (1970), and 43 CFR § 3107.5 (1971).

Duncan Miller, 4 IBLA 274 (Jan. 21, 1972)

Congress intended that the automatic termination provision of 30 U.S.C. § 188 (1970) apply to the regular, annual rental payment, the necessity for which a lessee had continuous notice and that provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued.

Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 7 (Feb. 18, 1972) 79 I.D. 17

Congress intended that the automatic termination provision of 30 U.S.C. § 188 (1970) apply to the regular annual rental payment, the necessity for which a lessee had continuous notice. That provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued.

Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 16 (Feb. 18, 1972) 79 I.D. 21

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease automatically terminates in accordance with the Act of July 29, 1954, where rental is not paid on or before the anniversary date of the lease, and the lease may not be reinstated if the amendatory relief provisions of the Act of May 12, 1970, 30 U.S.C. § 188(b) (1970), are not applicable.

Robert P. Good, 6 IBLA 233 (June 22, 1972)

Applications by lessees for relief of producing requirements must be made to the regional oil and gas supervisor of the Geological Survey. No suspension of operations and production will be granted on any lease in the absence of a well capable of production except when the Secretary directs a suspension in the interest of conservation.

This Department is not authorized to suspend a noncompetitive oil and gas lease so as to revive and extend the lease term.

Duncan Miller, 6 IBLA 283 (June 30, 1972)

An oil and gas lease which had terminated automatically for nonpayment of the rental due on or before the anniversary date of the lease will not be held to continue in effect thereafter because of the purported assignment of the lease within the 20 day period set out in 30 U.S.C. § 188 (1970).

Whether or not a purported assignee of a terminated oil and gas lease is a bona fide purchaser within the ambit of 30 U.S.C. § 184 (i)(1970) is a moot question.

Tenneco Oil Company, 7 IBLA 151 (Aug. 29, 1972)

Where the Geological Survey requests some 3 months prior to the termination date of lease a party seeking a proposed communitization agreement to file a necessary document therefor, and such party does not file the document until some 10 months after such request, the lease will be deemed to have terminated according to its normal term.

Kirkpatrick Oil & Gas Company, Beard Oil Company, John M. Beard, Bruce Anderson, 8 IBLA 108 (Nov. 13, 1972)

Oil and gas leases automatically terminate under the Act of July 29, 1954, 68 Stat. 585, 30 U.S.C. § 188(b) (1970) where lessees fail to pay rental on or before the anniversary date of their leases, and the Secretary is without authority to grant relief from the provisions of the statute where lessees have not made the rental payments.

Cayman Corporation and Shenandoah Oil Corporation, 8 IBLA 248 (Nov. 30, 1972)

Failure of a lessee to pay rental on or before the anniversary date of a lease, on which there is no well capable of producing oil or gas in paying quantities, results in the automatic termination of the lease by operation of law. A lease so terminated may be reinstated only if the terms and conditions of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970) have been satisfied.

James E. Fowler and Frances T. Fowler, 8 IBLA 372 (Dec. 12, 1972)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

A lease which is in its extended term because of production terminates upon cessation of production if reworking or drilling operations are not commenced upon the leasehold within 60 days thereafter and conducted with reasonable diligence during the period of nonproduction.

R. E. Hibbert, 8 IBLA 379 (Dec. 12, 1972)

TWENTY-YEAR LEASES

Upon being committed to a unit agreement, the right of renewal of a 20-year oil and gas lease is superseded by that part of the Mineral Leasing Act, 30 U.S.C. § 226 para. (j) (1970), which provides for extension of unitized leases.

Martin Yates, III, et al., 7 IBLA 261 (Sept. 15, 1972)

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal.

Anne Burnett Tandy, et al., 7 IBLA 356 (Sept. 28, 1972)

UNIT AND COOPERATIVE AGREEMENTS

Where an unit agreement was approved February 25, 1971, and terminated effective July 1, 1971, a lease holder within the unit agreement boundaries who had been afforded the opportunity to join the unit, but did not do so by signing the agreement or by subsequent joinder prior to the termination of the unit, is not entitled to the 2-year extension afforded by 30 U.S.C. § 226(j) (1970), and 43 CFR § 3107.5 (1971).

Duncan Miller, 4 IBLA 274 (Jan. 21, 1972)

Where only a portion of the lands in a unitized oil and gas lease is eliminated from the unit, the leased lands are situated in whole or in part on the known geologic structure of a producing oil or gas field, and the lease terms and factual circumstances are identical to those in the decision, Standard Oil Company of California et al., 76 I.D. 271 (1969), this Department will follow the ruling by the United States Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Morton, 450 F.2d 493 (1971), which overturned that decision solely upon principles of contract construction; therefore, the eliminated lands will retain the rental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to non-unitized lands within a known geologic structure.

Standard Oil Company of California and Atlantic Richfield Company, 5 IBLA 26 (Feb. 22, 1972)
79 I.D. 23

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

Actual drilling operations on an oil and gas lease, commenced during or after a period when a lease exists only by reason of its commitment to a productive unit, are not a sufficient basis for invoking the two-year extension under 30 U.S.C. § 226-1(d) (1970).

Ashland Oil, Inc., et al., 7 IBLA 58 (Aug. 9, 1972) 79 I.D. 532

Upon being committed to a unit agreement, the right of renewal of a 20-year oil and gas lease is superseded by that part of the Mineral Leasing Act, 30 U.S.C. § 226 para (j) (1970), which provides for extension of unitized leases.

Martin Yates, III, et al., 7 IBLA 261 (Sept. 15, 1972)

Where only a portion of the lands in a unitized oil and gas lease is eliminated from the unit, the leased lands are situated in whole or in part on a known geologic structure of a producing oil or gas field, and the lease terms and factual circumstances are identical to those in the decision, Standard Oil Company of California, et al., 76 I.D. 271 (1969), this Department will follow the ruling by the United States Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Morton, 450 F.2d 493 (1971), which overturned that decision solely upon principles of contract construction; therefore, the eliminated lands will retain the tental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to non-unitized lands within a known geologic structure.

Standard Oil Company of California, 7 IBLA 345 (Sept. 27, 1972)

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal.

Anne Burnett Tandy, et al., 7 IBLA 356 (Sept. 28, 1972)

Commitment to a unit agreement of a portion of a lease on which there is production, during the fixed term of the lease, will not extend the uncommitted, nonproducing segregated lease beyond the fixed term of years for the original lease or two years from the date of commitment, whichever is longer.

The segregated lease embracing nonproducing lands uncommitted to an approved unit agreement will continue for the fixed term of the original lease or for two years from date of segregation, whichever is the longer.

United States Smelting Refining & Mining Company, 8 IBLA 354 (Dec. 11, 1972)

OIL SHALE

WITHDRAWALS

Lands which are known to be underlain by deposits of oil shale are withdrawn from operation of the United States mining laws by Executive Order 5327 of April 15, 1930, as supplemented by Public Land Order 4522 of September 13, 1968.

Kelly B. Hall, George I. Hackford, Thomas V. Reynolds, 4 IBLA 329 (Feb. 14, 1972)

An application for a coal prospecting permit is properly rejected upon a determination that the lands applied for are withdrawn by Executive Order 5327 of April 15, 1930.

A determination by the Geological Survey that lands contain deposits of oil shale, and are therefore withdrawn by Executive Order 5327 of April 15, 1930, will not be disturbed in the absence of a clear showing that the determination was improperly made.

A temporary withdrawal of lands containing oil shale deposits will continue in effect until revoked by the President or by an act of Congress.

John R. Shelburne, 8 IBLA 115 (Nov. 14, 1972)

An application for a coal prospecting permit is properly rejected upon a determination that the lands applied for are withdrawn by Executive Order 5327 of April 15, 1930.

A determination by the Geological Survey that lands contain deposits of oil shale, and are therefore withdrawn by Executive Order 5327 of April 15, 1930, will not be disturbed in the absence of a clear showing that the determination was improperly made.

A temporary withdrawal of lands containing oil shale deposits will continue in effect until revoked by the President or by an act of Congress.

Heath B. Fowler, 8 IBLA 376 (Dec. 12, 1972)

OUTER CONTINENTAL SHELF LANDS ACT
(See also Oil and Gas Leases)

OIL AND GAS LEASES

Where an invitation to submit competitive bids for oil and gas leases reserves the right and discretion to reject any and all bids, regardless of the amount offered, and the high bid for a particular tract is much less than the government's estimated value of the tract, the high bid may properly be rejected for the reason of inadequacy of the cash bonus offered.

Kerr McGee Corporation, Cabot Corporation, Felmont Oil Corporation, Case-Pomeroy Oil Corporation, 6 IBLA 108 (June 5, 1972)

The competitive bidding requirement in the Outer Continental Shelf Lands Act for awarding oil and gas or sulfur leases is satisfied by due advertisement and a giving of an opportunity to bid, and

OIL AND GAS LEASES--Continued

contemplates that all bidders be placed upon the same plane of equality, and that they each bid upon the same terms and conditions set forth in the advertisements, and the pertinent statutes and in the Department's regulations. Competitive bidding does not require that more than one bid be submitted before the authorized officer, but only that the officer, by due advertisement, give opportunity for everyone to bid.

A decision rejecting a bid for an Outer Continental Shelf Lands Act oil and gas lease will be set aside where the bid met two of three criteria used by the manager to evaluate bids, and the third one was improperly imposed.

Tipperary Land & Exploration Corporation, 7 IBLA 270 (Sept. 19, 1972) 79 I.D. 596

Where an invitation to submit competetive bids for oil and gas leases reserves the right and discretion to reject any and all bids, regardless of the amount offered, and the high bid for a particular tract is less than 10 percent of the Government's estimated value of the tract, the high bid may properly be rejected for the reason of inadequacy of the cash bonus offered.

Antoine "Fats" Domino, 7 IBLA 375 (Sept. 29, 1972)

PATENTS OF PUBLIC LANDS

GENERALLY

Generally, when public lands are patented all title and control of the land passes from the United States and this Department has no authority to issue rights-of-way over the patented lands.

Arizona Public Service Company, 5 IBLA 137 (Mar. 13, 1972) 79 I.D. 67

In the interpretation of a patent for a Mexican private land grant in which the bank of a river is designated as one of the boundaries, the rule will be applied that where a call is from one point in a continuous object, natural or artificial, to another point in the same object, the line between and connecting the two points follows the sinuosities of such object, rather than a straight line connecting these points. The call for courses and distances in a Government survey made subsequent to a Mexican private land grant which is at variance with sinuosities of a river bank must yield in case of doubt to the superior call to the natural monuments referred to as constituting the boundary of the claim.

Clarence H. Hunt, Mamie M. Hunt, 5 IBLA 389 (May 4, 1972)

In determining what land is conveyed under patents or grants of public land bordering on a meandered body of water, the general rule is that the waterline itself, not the meander line, constitutes the boundary except where there is fraud or gross error shown in the survey of the lines or where

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.

Utah Power and Light Company, 6 IBLA 79
(May 22, 1972) 79 I.D. 397

EFFECT

A grazing lease will not bar disposal of the leased lands under the public land laws, and the issuance of a patent deprives the Department of all jurisdiction over the land so that where the leased land has been patented pursuant to the exchange provision of the Taylor Grazing Act cancellation of the lease will be sustained despite the fact that the grazing lessee was not given direct notice of the impending exchange, but the grazing lessee will be reimbursed for the unearned balance of the rental paid to the Bureau of Land Management.

Andrew J. Myers, 7 IBLA 314 (Sept. 22, 1972)

RESERVATIONS

Patents cannot convey what the law reserves, therefore, patents issued after the Federal Power Commission had granted a license for a transmission line are subject to the reservation prescribed by section 24 of the Federal Power Act regardless of whether or not the reservation was stated in the patent.

Where lands are patented subject only to a reservation under section 24 of the Federal Power Act, the Department of the Interior has no authority under the Act of March 4, 1911, to grant a right-of-way to maintain an existing transmission line which had been licensed by the Federal Power Commission even though the Commission has determined the line is not a primary line within its licensing authority.

Quaere: Whether the Department of the Interior has authority to reserve a right when lands are patented to grant rights-of-way under the Act of March 4, 1911, over the patented lands.

Even if there is such authority, but the language of the regulations and of the insertions in patents does not clearly reserve the right in the future to grant the right-of-way under the Act of March 4, 1911, where a right-of-way was then licensed under a different act, a reservation of the right will not be presumed.

Arizona Public Service Company, 5 IBLA 137
(Mar. 13, 1972) 79 I.D. 67

PHOSPHATE LEASES AND PERMITS

PERMITS

Where a phosphate prospecting permit application has been rejected as to part of the lands applied for upon the basis of reports by the Geological Survey, and the Survey determines upon further consideration that prospecting is necessary to determine the workability of the phosphate

PHOSPHATE LEASES AND PERMITS--Continued

PERMITS--Continued

deposits in part of the rejected lands, the application will be allowed for those lands.

A hearing will not be granted for the purpose of determining whether or not certain lands are known to contain workable deposits of phosphate where there does not appear to be a substantial question of fact but only a question of the sufficiency of the established facts to serve as the basis for a determination that the lands do contain workable deposits.

J. D. Archer, 4 IBLA 323 (Feb. 14, 1972)

POTASSIUM LEASES AND PERMITS

PERMITS

Failure by an applicant to respond to a Bureau of Land Management State Office letter inquiring only whether the applicant is still interested in receiving a prospecting permit is not on adequate ground for rejection of the applicants' prospecting permit application.

Phyllis Colman and William J. Colman,
8 IBLA 444 (Dec. 27, 1972)

POWER

DEVELOPMENT AND SALE

Where a contract between the United States and a water users' association transfers care, operation, and maintenance of a reclamation project to the association and gives it a qualified interest in revenues earned from the operation of project power plants and the leasing of project grazing and farm lands, the association would be entitled to be made whole if use of such lands by the United States for a non-project purpose causes the association to lose revenues that are being credited to it pursuant to the contract.

Revenues earned by a water users' association from the operation of project power plants and the leasing of project grazing and farm lands cannot be distributed to individual water users either before or after project repayment but must be applied to project purposes, where the United States has transferred the care, operation, and maintenance of a reclamation project to the association under a contract which provides that such revenues are to be credited in conformity with subsection 1 of section 4 of the Act of December 5, 1924 (43 U.S.C. § 501).

Strawberry Valley Project, Utah, M-36863
(Aug. 8, 1972) 79 I.D. 513

TRANSMISSION LINES

Patents cannot convey what the law reserves, therefore, patents issued after the Federal Power Commission had granted a license for a transmission line are subject to the reservation prescribed by section 24 of the Federal Power Act regardless of whether or not the reservation was stated in the patent.

POWER--Continued

TRANSMISSION LINES--Continued

Where lands are patented subject only to a reservation under section 24 of the Federal Power Act, the Department of the Interior has no authority under the Act of March 4, 1911, to grant a right-of-way to maintain an existing transmission line which had been licensed by the Federal Power Commission even though the Commission has determined the line is not a primary line within its licensing authority.

The Department of the Interior has authority under the Act of March 4, 1911, to grant rights-of-way over public lands for hydroelectric transmission lines which are not primary lines under the jurisdiction of the Federal Power Commission.

Quaere: Whether the Department of the Interior has authority to reserve a right when lands are patented to grant rights-of-way under the Act of March 4, 1911, over the patented lands.

Even if there is such authority, but the language of the regulations and of the insertions in patents does not clearly reserve the right in the future to grant the right-of-way under the Act of March 4, 1911, where a right-of-way was then licensed under a different act, a reservation of the right will not be presumed.

Arizona Public Service Company, 5 IBLA 137 (Mar. 13, 1972) 79 I.D. 67

PRACTICE BEFORE THE DEPARTMENT
(See also Rules of Practice)

PERSONS QUALIFIED TO PRACTICE

A field official of the Bureau of Indian Affairs, not otherwise shown to be qualified, is not eligible to practice before the Department by representing individual Indians, Aleuts and Eskimos in appeals to the Board of Land Appeals, notwithstanding that the appellants reside in the area administered by the Bureau of Indian Affairs office wherein he is employed.

One who, as a government employee, has participated in a matter pending before the Department through his decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, is not authorized to practice before the Department on behalf of a private appellant in a case involving that matter.

Julius F. Pleasant, John Moore, Elia Wassillie, 5 IBLA 171 (Mar. 14, 1972)

Question of authority for Department of Agriculture attorney to appear before Departmental hearing examiner in a national forest mining claims contest is one of practice to be raised by motion and is not an issue in the action.

Objection as to want of authority of Department of Agriculture attorney to appear before department hearing examiner in a national forest mining claim contest should be raised promptly before the hearing examiner.

PRACTICE BEFORE THE DEPARTMENT--Continued

PERSONS QUALIFIED TO PRACTICE--Continued

In a mining contest hearing relating to lands within a national forest, the Office of the General Counsel, Department of Agriculture, may properly appear in behalf of the Government pursuant to agreement between the Director, Bureau of Land Management and the Chief, Forest Service.

United States of America v. Raymond Bass, Betty Yeck, et al., 6 IBLA 113 (June 5, 1972)

PRIVATE EXCHANGES

PROTESTS

A protest against a proposed private exchange is properly dismissed when the proposed exchange complies with the statutory requirements that the exchange benefit the public interest and that the value of the selected lands not exceed the value of the offered lands, and where the allegations by the protestants do not provide a basis for sustaining the protest.

S. V. Wantrup, Wallace Hardin, 5 IBLA 286 (Apr. 13, 1972)

PUBLIC INTEREST

A protest against a proposed private exchange is properly dismissed when the proposed exchange complies with the statutory requirements that the exchange benefit the public interest and that the value of the selected lands not exceed the value of the offered lands, and where the allegations by the protestants do not provide a basis for sustaining the protest.

S. V. Wantrup, Wallace Hardin, 5 IBLA 286 (Apr. 13, 1972)

PUBLIC LANDS
(See also Accretion, Boundaries, Surveys of Public Lands)

CLASSIFICATION

A classification of land for disposition under the Recreation and Public Purposes Act segregates the land from mineral location until it is vacated; mining claims located while the land is so segregated are properly declared null and void ab initio.

Henri Guzek, 5 IBLA 133 (Mar. 10, 1972)

A classification of land by Bureau motion for disposition under the Recreation and Public Purposes Act segregates the land from mineral locations, and a mining claim located on lands so classified is null and void ab initio. Buch v. Morton, 449 F.2d 600 (9th Cir. 1971).

Gerald D. Heden, 6 IBLA 291 (July 6, 1972)

DISPOSALS OF

Generally

Private agreements do not control the disposition of of federal public land. Rights to federal lands must be gained by compliance with the governing federal public land laws.

Kennecott Copper Corporation, 8 IBLA 21 (Oct. 6, 1972) 79 I.D. 636

PUBLIC LANDS--Continued

DISPOSALS OF--Continued

Smallest Legal Subdivision Rule

While the Departmental practice is that a quarter quarter section, i.e., forty acres, is ordinarily the minimum unit of land for classification and disposal, the practice may be waived by the Secretary and homestead permitted for a smaller area, where the entryman relied upon erroneous information furnished by a State Office and he exercised reasonable care and good faith in locating his boundaries.

Francis I. Hunt, 8 IBLA 390 (Dec. 19, 1972)

RIPARIAN RIGHTS

In determining what land is conveyed under patents or grants of public land bordering on a meandered body of water, the general rule is that the waterline itself, not the meander line, constitutes the boundary except where there is fraud or gross error shown in the survey of the lines or where the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.

Utah Power and Light Company, 6 IBLA 79 (May 22, 1972) 79 I.D. 397

PUBLIC RECORDS
(See also Administrative Procedure)

Erroneous advice given by employees of the Bureau of Land Management through incorrect notations on the historical index or by a public notice as to availability of land cannot confer a right not authorized by law.

Hiko Bell Mining & Oil Company, 6 IBLA 8 (May 9, 1972)

A homestead application must be rejected when filed at a time when the Master Title Plat in the local Bureau of Land Management office shows prima facie that the lands are embraced in a state selection application and the serial register sheet, referred to on the plat, shows that tentative approval has been given to the state selection for those lands.

State of Alaska, Kenneth D. Makepeace, 6 IBLA 58 (May 22, 1972) 79 I.D. 391

Interrogatories presented by an appellant will not be honored where the information requested is available to the general public from Departmental records in accordance with the Public Information Act, 5 U.S.C. § 552 (1970), and procedures in 43 CFR Part 2.

Starling Brokers, et al., 6 IBLA 237 (June 26, 1972)

Notice on public land status records in the local Bureau of Land Management office of the issuance of a preliminary permit by the Federal Power Commission, and the filing of the application for the permit and the application for a license with the Commission, is not essential to segregate the lands from location under the mining laws.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

PUBLIC SALES

APPLICATIONS

An application filed pursuant to the Act of September 26, 1968 (82 Stat. 870, 43 U.S.C. §§ 1431-1435 (1970)), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

Rowe M. Bolton, 5 IBLA 226 (Mar. 22, 1972)

An application filed pursuant to the Act of September 26, 1968, 82 Stat. 870, 43 U.S.C. §§ 1431-1435 (1970), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

John C. Amonson, 8 IBLA 346 (Dec. 11, 1972)

PREFERENCE RIGHTS

A preference right to purchase land offered at public sale is lost when the claimant fails to submit the publication costs within the time required by the regulations and notice of high bidder, where even though the claimant was the applicant for the sale and had made a deposit for publication costs the deposit was not sufficient to cover the actual costs, and the preference-right applicant failed, after notice of the costs, to remit the balance.

Gene Van Matre, 6 IBLA 229 (June 22, 1972)

One who fails to submit satisfactory evidence of his ownership of contiguous lands within the time specified by the authorized officer as provided by the pertinent regulation loses his preference right to purchase the land.

Mildred M. Miller, 7 IBLA 363 (Sept. 28, 1972)

SALES UNDER SPECIAL STATUTES

An application filed pursuant to the Act of September 26, 1968 (82 Stat. 870, 43 U.S.C. §§ 1431-4135 (1970)), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

Rowe M. Bolton, 5 IBLA 226 (Mar. 22, 1972)

The Unintentional Trespass Act of September 26, 1968, does not require that an applicant for a sale of public land to be held under its terms be an owner of contiguous public lands as of the date of its enactment; it is enough if an applicant owns such land prior to the expiration date of the Act on September 26, 1971.

George T. Olds, 8 IBLA 81 (Nov. 1, 1972)

PUBLIC SALES--Continued

SALES UNDER SPECIAL STATUTES--Continued

Since the Unintentional Trespass Act authorizes the Secretary on his own motion to offer qualified land for sale, an application should not be rejected solely because it is made by a person who may not be the "owner" of contiguous land as that term is used in the Act. The determination of whether the land in question can be classified for public sale is based on clearly established criteria; it should not be made strictly on a basis of whether an applicant is an owner of contiguous land.

Vernon Miller, 8 IBLA 255 (Dec. 4, 1972)

An application filed pursuant to the Act of September 26, 1968, 82 Stat. 870, 43 U.S.C.§§ 1431-1435 (1970), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

John C. Amonson, 8 IBLA 346 (Dec. 11, 1972)

RAILROAD GRANT LANDS

When a railroad company reconveys to the United States land which it received by patent under the Act of July 27, 1866, (14 Stat. 292), and in such reconveyance reserves the minerals, the land is not open to location under the mining laws of the United States, and mining claims located thereon are null and void ab initio.

Norman A. Whittaker, 8 IBLA 17 (Oct. 6, 1972)

RECLAMATION LANDS

GENERALLY

Where a contract between the United States and a water users' association transfers care, operation, and maintenance of a reclamation project to the association and gives it a qualified interest in revenues earned from the operation of project power plants and the leasing of project grazing and farm lands, the association would be entitled to be made whole if use of such lands by the United States for a non-project purpose causes the association to lose revenues that are being credited to it pursuant to the contract.

Revenues earned by a water users association from the operation of project power plants and the leasing of project grazing and farm lands cannot be distributed to individual water users either before or after project repayment but must be applied to project purposes, where the United States has transferred the care, operation, and maintenance of a reclamation project to the association under a contract which provides that such revenues are to be credited in conformity with subsection 1 of section 4 of the Act of December 5, 1924 (43 U.S.C. § 501).

Strawberry Valley Project, Utah, M-36863 (Aug. 8, 1972) 79 I.D. 513

RECLAMATION LANDS--Continued

ACQUISITION AND DISPOSAL

Where title to lands in a reclamation project is in the United States, such lands or any fixtures thereon cannot be sold or mortgaged, either before or after project repayment, except as authorized by Congress.

Strawberry Valley Project, Utah, M-36863 (Aug. 8, 1972) 79 I.D. 513

LEASES

Where a contract between the United States and a water users' association transfers care, operation, and maintenance of a reclamation project to the association and gives it a qualified interest in revenues earned from the operation of project power plants and the leasing of project grazing and farm lands, the association would be entitled to be made whole if use of such lands by the United States for a non-project purpose causes the association to lose revenues that are being credited to it pursuant to the contract.

Revenues earned by a water users' association from the operation of project power plants and the leasing of project grazing and farm lands cannot be distributed to individual water users either before or after project repayment but must be applied to project purposes, where the United States has transferred the care, operation, and maintenance of a reclamation project to the association under a contract which provides that such revenues are to be credited in conformity with subsection 1 of section 4 of the Act of December 5, 1924 (43 U.S.C. § 501).

Where a water users' association was--under a 1940 contract between the United States and the association transferring care, operation, and maintenance of a reclamation project to the association--entitled to make, subject to the approval of the Secretary of the Interior, oil and gas leases on lands specially acquired for the project and to be credited with the revenues therefrom in conformity with subsection 1 of section 4 of the Act of December 5, 1924 (43 U.S.C. § 501), Congress did not intend, in enacting the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. § 351), to take such rights away from the association.

Strawberry Valley Project, Utah, M-36863 (Aug. 8, 1972) 79 I.D. 513

RECREATION AND PUBLIC PURPOSES ACT

A classification of land for disposition under the Recreation and Public Purposes Act segregates the land from mineral location until it is vacated; mining claims located while the land is so segregated are properly declared null and void ab initio.

Henri Guzek, 5 IBLA 133 (Mar. 10, 1972)

A classification of land by Bureau motion for disposition under the Recreation and Public Purposes Act segregates the land from mineral locations, and a mining claim located on lands so classified is null and void ab initio. Buch v. Morton, 449 F.2d 600 (9th Cir. 1971).

Gerald D. Heden, 6 IBLA 291 (July 6, 1972)

RECREATION AND PUBLIC PURPOSES ACT--Continued

Surveyed lots within the St. Paul townsite (Pribilof Islands, Alaska) which were withdrawn from all forms of appropriation under the public land laws by section 11 of the Alaska Native Claims Settlement Act are not subject to disposal under the Recreation and Public Purposes Act, and an application thereunder must be rejected.

Where federal governmental employees advised an applicant to apply for land under the Recreation and Public Purposes Act, the Department of the Interior is not bound to grant the application where it is decided that it is improper to do so, as erroneous advice cannot confer any rights not authorized by law.

Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (Nov. 22, 1972)

REGULATIONS
(See also Administrative Procedure)

GENERALLY

Where regulations do not clearly set forth the conditions under which a simultaneous offer for a single parcel, for which no other simultaneous offers were filed, may be withdrawn, the regulations will be construed favorably to the appellant and he will be permitted to withdraw his offer and to obtain return of his advance rental if he files his withdrawal prior to the time the lease has been signed on behalf of the United States.

Duncan Miller, 5 IBLA 35 (Feb. 24, 1972)

The Secretary of the Interior is authorized under sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) (1970) [formerly 48 U.S.C. § 421 (1958)], to promulgate regulations governing small sales of timber in Alaska which provide for competitive bidding. However, where regulations specifically provide for exclusively noncompetitive procedures for such sales, the general timber regulations, based upon 30 U.S.C. § 601 (1970) will be deemed not applicable.

Andrew W. Miscovich, 6 IBLA 100 (May 31, 1972)
79 I.D. 410

Where regulations do not clearly set forth the conditions under which a simultaneous offer for a single parcel, for which no other simultaneous offers were filed, may be withdrawn, the regulations will be construed favorably to the appellant and he will be permitted to withdraw his offer and to obtain return of his advance rental if he files his withdrawal prior to the time the lease has been signed on behalf of the United State.

Duncan Miller, 7 IBLA 360 (Sept. 28, 1972)

APPLICABILITY

Regulations should be so clear that there is no basis for an oil and gas lease applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

Louis Alford, Prescott A. Sherman, 4 IBLA 277 (Jan. 27, 1972)

REGULATIONS--Continued

APPLICABILITY--Continued

Where regulations do not clearly set forth the conditions under which a simultaneous offer for a single parcel, for which no other simultaneous offers were filed, may be withdrawn, the regulations will be construed favorably to the appellant and he will be permitted to withdraw his offer and to obtain return of his advance rental if he files his withdrawal prior to the time the lease has been signed on behalf of the United States.

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Duncan Miller, 7 IBLA 360 (Sept. 28, 1972)

INTERPRETATION

Regulations should be so clear that there is no basis for an oil and gas lease applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

Louis Alford, Prescott A. Sherman, 4 IBLA 277 (Jan. 27, 1972)

Where regulations do not clearly set forth the conditions under which a simultaneous offer for a single parcel, for which no other simultaneous offers were filed, may be withdrawn, the regulations will be construed favorably to the appellant and he will be permitted to withdraw his offer and to obtain return of his advance rental if he files his withdrawal prior to the time the lease has been signed on behalf of the United States.

Duncan Miller, 5 IBLA 35 (Feb. 24, 1972)

Where an offeror for an oil and gas lease seeks to avail himself of a provision of a regulation which permits him to describe lands by "acquisition tract number," and where that term has not been defined, he will not be held to have lost his statutory preference right for failure to comply with the regulation if the numbers given may reasonably

RIGHTS-OF-WAY--Continued

ACT OF MARCH 3, 1891

The right-of-way granted under the Act of March 3, 1891, is an easement only, and does not vest in the holder a limited fee in the land. It is subject to cancellation by the Department of the Interior for failure to comply with the conditions under which it is issued.

As section 20 of the right-of-way Act of March 3, 1891, requires forfeiture of the grant to the extent improvements are not completed within five years from the grant, this Department cannot extend the time to construct the right-of-way improvements.

To cancel a right-of-way granted under the Act of March 3, 1891, the grantee should be given notice of the grounds for the cancellation and the opportunity for a hearing if he disputes the facts.

Fred Markle, 6 IBLA 52 (May 18, 1972)

ACT OF JANUARY 21, 1895

The rejection of an application for a tramroad (railroad) right-of-way filed pursuant to the Act of January 21, 1895, will be affirmed where the applicant fails to show how it is needed in any present mining or quarrying operation.

Western Aggregates of Mineral & Rock, Inc., 7 IBLA 338 (Sept. 26, 1972)

ACT OF MARCH 4, 1911

Where lands are patented subject only to a reservation under section 24 of the Federal Power Act, the Department of the Interior has no authority under the Act of March 4, 1911, to grant a right-of-way to maintain an existing transmission line which had been licensed by the Federal Power Commission even though the Commission has determined the line is not a primary line within its licensing authority.

The Department of the Interior has authority under the Act of March 4, 1911, to grant rights-of-way over public lands for hydroelectric transmission lines which are not primary lines under the jurisdiction of the Federal Power Commission.

Quaere: Whether the Department of the Interior has authority to reserve a right when lands are patented to grant rights-of-way under the Act of March 4, 1911, over the patented lands.

Even if there is such authority, but the language of the regulations and of the insertions in patents does not clearly reserve the right in the future to grant the right-of-way under the Act of March 4, 1911, where a right-of-way was then licensed under a different act, a reservation of the right will not be presumed.

Arizona Public Service Company, 5 IBLA 137 (Mar. 13, 1972) 79 I.D. 67

A radio tower site right-of-way application may not be granted until approval for the proposed installation is received from the Federal Communications Commission.

Tucson Radio Incorporated, 8 IBLA 441 (Dec. 27, 1972)

Where an applicant for a right-of-way to be used as a communications site claims exemption from payment of all service fees and charges for use and occupancy of the land for the reason that the ambulance service operated by the applicant receives a municipal subsidy, the exemption will be denied if appellant does not show that the project is "municipally operated", or it is exclusively a non-profit project, or that the use and occupancy will be exclusively for a municipally operated project.

Where governmental criteria are established for the conduct of a particular business, the expense of meeting those criteria are a necessary cost of doing business and the absence of any profit to be derived from such expenditures does not entitle the proprietor to the free use of public land which he needs to meet the standard imposed.

Carson Ambulance Service, 8 IBLA 454 (Dec. 29, 1972)

APPLICATIONS

An application for a right-of-way on land under a form of withdrawal which precludes the granting of such applications is nugatory and cannot be given life after its date of filing, even by a restoration of land during pendency of an appeal from its rejection.

Communication Equipment and Services, Inc., 6 IBLA 44 (May 12, 1972)

A radio tower site right-of-way application may not be granted until approval for the proposed installation is received from the Federal Communications Commission.

Tucson Radio Incorporated, 8 IBLA 441 (Dec. 27, 1972)

Where an applicant for a right-of-way to be used as a communications site claims exemption from payment of all service fees and charges for use and occupancy of the land for the reason that the ambulance service operated by the applicant receives a municipal subsidy, the exemption will be denied if appellant does not show that the project is "municipally operated", or it is exclusively a non-profit project, or that the use and occupancy will be exclusively for a municipally operated project.

Where governmental criteria are established for the conduct of a particular business, the expense of meeting those criteria are a necessary cost of doing business and the absence of any profit to be derived from such expenditures does not entitle the proprietor to the free use of public land which he needs to meet the standard imposed.

Carson Ambulance Service, 8 IBLA 454 (Dec. 29, 1972)

RIGHTS-OF-WAY--Continued

CANCELLATION

The right-of-way granted under the Act of March 3, 1891, is an easement only, and does not vest in the holder a limited fee in the land. It is subject to cancellation by the Department of the Interior for failure to comply with the conditions under which it is issued.

As section 20 of the right-of-way Act of March 3, 1891, requires forfeiture of the grant to the extent improvements are not completed within five years from the grant, this Department cannot extend the time to construct the right-of-way improvements.

To cancel a right-of-way granted under the Act of March 3, 1891, the grantee should be given notice of the grounds for the cancellation and the opportunity for a hearing if he disputes the facts.

Fred Markle, 6 IBLA 52 (May 18, 1972)

CONDITIONS AND LIMITATIONS

As section 20 of the right-of-way Act of March 3, 1891, requires forfeiture of the grant to the extent improvements are not completed within five years from the grant, this Department cannot extend the time to construct the right-of-way improvements.

Fred Markle, 6 IBLA 52 (May 18, 1972)

FEDERAL HIGHWAY ACT

Where an unrestricted appropriation of a material site under the Federal Highway Act is inconsistent with land management programs, the application therefor may be rejected or a material site may issue under terms and conditions necessary to maintain program values.

The Materials Act does not permit a free-use permit to be issued for mineral materials where disposal is otherwise specifically authorized by law. A free-use permit may not be issued in lieu of a material site duly applied for under the Federal Highway Act.

State of Oregon, 6 IBLA 72 (May 22, 1972)

NATURE OF INTEREST GRANTED

The right-of-way granted under the Act of March 3, 1891, is an easement only, and does not vest in the holder a limited fee in the land. It is subject to cancellation by the Department of the Interior for failure to comply with the conditions under which it is issued.

Fred Markle, 6 IBLA 52 (May 18, 1972)

An easement to the United States which authorizes use of an existing road, and location and construction of extensions and spurs to that road, does not authorize construction of a proposed road which would not be an extension nor spur of the existing road,

RIGHTS-OF-WAY--Continued

NATURE OF INTEREST GRANTED--Continued

but instead would be a relocation and by-pass of a portion of the existing road.

Laura E. Hunt and Chauncey G. Hunt, 7 IBLA 326 (Sept. 26, 1972)

RULES OF PRACTICE

(See also Appeals, Contests and Protests, Contracts, Federal Coal Mine Health and Safety Act of 1969, Hearings, Indian Probate, Practice Before The Department)

GENERALLY

Where the Secretary assumed jurisdiction of a mining claim contest by directing that the hearing examiner forward a recommended decision directly to the Department level, the Secretary was not bound by such directive to decide the case and it was not a violation of due process to return the case to the Director of the Bureau of Land Management to render the initial decision under the then prevailing adjudicative procedure.

United States v. Neil Stewart, 5 IBLA 39 (Feb. 28, 1972) 79 I.D. 27

Where BLM advises that its decision was premised in error and it so requests, the decision appealed from will be vacated and remanded.

Alver C. Duncan, 5 IBLA 418 (May 2, 1972)

Where a party protested an issued right-of-way and requests cancellation thereof, asserting a violation of state law, and the matter is being litigated in the courts, the protest will not be entertained until a certified copy of the final judgment role is submitted to the land office.

City of Los Angeles, Mrs. Ida P. Cuffe, Protestant, 6 IBLA 505 (May 16, 1972)

Where the BLM advises that the decision appealed from is in error, and it so requests, the decision appealed from will be vacated and the case remanded.

Clark Canyon Lumber Company, 6 IBLA 509 (May 18, 1972)

Where BLM advises that its decision is erroneous and requests that the case be remanded for further consideration, the decision appealed from will be vacated.

Elvin C. Crowther, 6 IBLA 511 (May 23, 1972)

When an appeal was taken from a decision requiring certain additional evidence, and the evidence is submitted on appeal, the record will be remanded for consideration and processing.

Charles H. Killmar, 6 IBLA 533 (June 6, 1972)

When an appeal was taken from a decision requiring execution of stipulations and the stipulations are

RULES OF PRACTICE--Continued

GENERALLY--Continued

executed while the case is on appeal, the appeal will be dismissed and the record remanded for further processing.

Bernard W. Cline, 6 IBLA 535 (June 16, 1972)

Clara Mae Overton, 6 IBLA 536 (June 16, 1972)

Where a question on appeal becomes moot the appeal will be dismissed. Where an appeal is taken from a requirement for execution of special stipulations as a prerequisite to the issuance of an oil and gas lease and the stipulations are executed during the pendency of the appeal, the issue on appeal is moot and the appeal will be dismissed.

Patricia Hickok, 6 IBLA 540 (June 30, 1972)

The provisions of section 8(c) of the Administrative Procedure Act, 5 U.S.C. § 557(c) (1970), prescribing findings and conclusions on all "the material issues of fact, law, or discretion presented on the record," with "the appropriate rule, order, sanction, relief, or denial thereof," and the regulations governing contest proceedings involving mining claims, 43 CFR 4.425-8(b) (1972), do not require that an Administrative Law Judge make a ruling on a charge in a contest complaint that land is nonmineral in character, where he rules on another issue which is dispositive of the controversy.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

APPEALS

Generally

Where a grazing applicant signs a range-line agreement which is incorporated in a district manager's decision from which the applicant does not protest or appeal, the applicant is thereafter barred from challenging only those matters adjudicated in that decision. However, where the applicant subsequently appeals a district manager's partial rejection of his current grazing privileges, that appeal may properly be considered on its merits where it raises an issue of a boundary location which clearly was not the subject of the range-line agreement relied upon.

Evart Jensen, 5 IBLA 96 (Mar. 6, 1972)

Where an appeal has been taken and a final Departmental decision has been rendered thereon, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same party, the same land, the same claim, and the same issues.

Eldon L. Smith, 5 IBLA 330 (Apr. 18, 1972)
79 I.D. 149

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

In the absence of a Board rule requiring that the Board member who presided at the hearing of an appeal prepare or participate in the decision, the failure of the Board to assign the preparation of an opinion to a retired, former member who conducted the hearing is not a violation of a contractor's constitutional rights, even where credibility and the demeanor of witnesses are in issue, since procedural due process requires only that all of the testimony, exhibits, briefs and other documentary material in the record be carefully reviewed and considered by the members of the Board rendering the decision.

Where in the course of an extended hearing of an appeal by a contractor under a contract for the construction of a dam and related work, substantial testimony was taken, accompanied by the introduction of numerous exhibits, without objection by the Government, in connection with certain claims relating to allegedly harsh and unworkable concrete ordered by the Government, only some of which were expressly considered by the contracting officer in his various findings of fact, a remand of unconsidered claims to the contracting officer for additional findings is not required.

A contractor in an appeal having a massive record, who alleges instances of inadequate payment under a contract for the construction of a dam, and in support thereof introduces into evidence various Government payment books unpaginated and some seven inches in thickness without clearly establishing such allegations by further specification or identification in such books, has not sustained its burden of proof, since it was not incumbent upon the Board to search the record "for errors that may be lurking among the labyrinths."

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

Where the Bureau of Land Management requests return of a case for reconsideration of its decision, the case will be remanded.

Village of Tularosa, New Mexico, 6 IBLA 503 (May 12, 1972)

Where an appeal is taken from a requirement of the BLM and the appellant complies with the requirement during the pendency of the appeal, the appeal will be dismissed. An appeal will be dismissed when the appellant withdraws the application which is the subject of the decision appealed from.

John Oakason, 6 IBLA 539 (June 19, 1972)

Interrogatories presented by an appellant will not be honored where the information requested is available to the general public from Departmental records in accordance with the Public Information Act, 5 U.S.C. § 552 (1970), and procedures in 43 CFR Part 2.

Starling Brokers, et al., 6 IBLA 237 (June 26, 1972)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Where an appeal has been taken and a final Departmental decision has been reached the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same party, the same land, the same claim, and the same issues, absent compelling legal or equitable reasons for reconsideration.

Eldon L. Smith, 6 IBLA 310 (July 12, 1972)

Despite factual concessions by counsel for the Government, the Board is not precluded from reviewing the entire record and determining whether, and to what extent, rights have been earned under the public land laws.

United States v. William Leonard Grediagin, 7 IBLA 1 (July 24, 1972)

Where the issues on appeal are identical or substantially similar to matters previously considered, and no new evidence or persuasive arguments are advanced for reconsideration or reversal of the prior position, disposition will be made in accordance with prior precedent.

R. M. Barton, 7 IBLA 230 (Sept. 12, 1972)

A statement made in a Bureau appeal decision which does not accurately reflect one evidentiary fact does not establish that the decision's other findings were erroneous, and this Board will sustain the Bureau's determination that mining claims are invalid where the entire record supports that conclusion.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

Appeals from Bureau of Land Management decisions, which are not dispositive of the ultimate issues, will not be considered. They are properly dismissed as premature unless permission to appeal is first obtained from the Board of Land Appeals upon a showing that an immediate appeal may materially advance the final decision.

Anna A. Madros, 7 IBLA 323 (Sept. 26, 1972) 79 I.D. 606

Where no appeal is taken from a decision canceling a homestead entry for failure to submit final proof at the expiration of the term of the entry, and final proof is submitted six years subsequent to such decision, res judicata and the doctrine of finality of administrative action bar further consideration of the case when an appeal is taken from a decision rejecting final proof.

A case is considered closed when no appeal is taken within the time permitted by the regulations.

John W. Roth, 8 IBLA 39 (Oct. 11, 1972)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the claimant then has the burden of proof to show by a preponderance of the evidence that a discovery has been made.

United States v. Ray Guthrie et al., 5 IBLA 303 (Apr. 14, 1972)

A contractor whose work was disrupted and damaged as a result of the bursting of an oil pipeline (owned by a third party), which ran under the contract site and over which the contractor had, with the Government's approval, located its concrete batching plant, was not entitled to be compensated by the Government for the damage sustained on the ground that the damage resulted from the Government's failure to discharge its implied contractual obligation to provide a proper and safe construction site, in the absence of proof that the Government was responsible for the bursting, since the contractor bore the risk of loss under the Permits and Responsibilities clause of the contract.

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

An appeal claiming the costs of repair of corrosion in four stainless steel clad surge tanks is denied where the Government has discharged its burden in showing by a preponderance of the evidence of record that the most probable causes of corrosion were welding defects, not allowed by the specifications, and contractor's failure to protect the interiors of the tanks from weld and gouge spatter.

Appeal of R. H. Fulton, Contractor, IBCA-769-3-69 (July 21, 1972) 79 I.D. 547

Where the Government was found to be responsible for an indeterminate portion of a delay in having utility poles relocated on a road construction job and information having a direct bearing on the propriety of the amount of liquidated damages assessed was either in the possesssion of the Government or more accessible to it than it was to the appellant, no attempt should be made to apportion the delay between the parties and the Board therefore holds that the appellant is entitled to have the contract time extended to the date the contract was determined to be substantially complete.

Appeal of John H. Moon & Sons, IBCA-815-12-69 (July 31, 1972) 79 I.D. 465

The contracting officer's determination of the hours properly chargeable to the Government under a rental of equipment contract will be sustained where the contractor asserts that the hours claimed are reflected in its records but fails to offer any evidence in support of the claims made.

Appeal of C.I.C. Construction, IBCA-941-11-71 (Sept. 26, 1972) 79 I.D. 607

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the burden of proof then shifts to the mining claimants to show by a preponderance of the evidence that a discovery has been made.

United States v. Cecil R. Blomquist, Administrator of the Estate of Frank Blomquist, et al., 7 IBLA 351 (Sept. 28, 1972)

In a contest against the validity of a mining claim, the Government need only establish a prima facie case that no discovery of a valuable mineral deposit has been made within the limits of the claim; the burden of proof is then upon the claimant to show with a preponderance of the evidence that the requisite discovery has been made.

United States v. Joseph P. McKay (a/k/a Joseph P. McKay, Jr.), 8 IBLA 42 (Oct. 12, 1972)

Where a government resurvey is challenged by an appellant, he has the burden of establishing that the resurvey is erroneous and of identifying specifically reversible error in the decision appealed from. An appellant cannot expect the Department to assume his burden of searching the record and the law in an effort to find some reversible error in the decision appealed from.

Mrs. J. W. Moore, 8 IBLA 261 (Dec. 5, 1972)

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the claimant then has the burden of proof to show by a preponderance of the evidence that a discovery has been made.

United States v. George Avgeris, 8 IBLA 316 (Dec. 7, 1972)

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, claimant then has the burden of showing with a preponderance of the evidence that a discovery has been made.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

Where the Government has made a prima facie showing of a lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon claimant.

United States v. Humboldt Placer Mining Company and Del De Rosier, 8 IBLA 407 (Dec. 20, 1972)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time required.

John Oakason, 4 IBLA 453 (Jan. 11, 1972)

Geocon, Inc., Cameo Minerals, Inc., 4 IBLA 470 (Feb. 10, 1972)

United States of America v. Floid S. Day, 5 IBLA 401 (Feb. 18, 1972)

Ann Miner, Marie Miner, 5 IBLA 403 (Feb. 23, 1972)

Robert C. Berg, 5 IBLA 406 (Mar. 22, 1972)

Hazel M. Deater, 5 IBLA 407 (Mar. 22, 1972)

John Oakason, 5 IBLA 408 (Mar. 22, 1972)

William A. Stevenson, 5 IBLA 409 (Mar. 22, 1972)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the application that was the subject of the appeal.

Heirs of Virginia B. Parrish, 4 IBLA 449 (Jan. 11, 1972)

King Silver Corporation, 4 IBLA 451 (Jan. 11, 1972)

Jean Oakason, 4 IBLA 455 (Jan. 12, 1972)

B. H. Rosenblatt, 4 IBLA 456 (Jan. 12, 1972)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal and agrees to accept the required stipulations.

A A Minerals Corporation, 4 IBLA 457 (Jan. 27, 1972)

A A Minerals Corporation, 4 IBLA 458 (Jan. 27, 1972)

A A Minerals Corporation, 4 IBLA 459 (Jan. 27, 1972)

G. W. Anderson, 4 IBLA 460 (Jan. 27, 1972)

G. W. Anderson, 4 IBLA 461 (Jan. 27, 1972)

Ida Lee Anderson, 4 IBLA 462 (Jan. 27, 1972)

John R. Anderson, 4 IBLA 463 (Jan. 27, 1972)

Malcolm F. Justice, Jr., 4 IBLA 468 (Feb. 9, 1972)

James A. Krumhansl, 5 IBLA 410 (Mar. 28, 1972)

An appeal to the Board of Land Appeals must be dismissed where the notice of appeal, although received during the 10-day grace period, was not transmitted until after the expiration of the 30-day period in which it was required to be filed.

R. M. Barton, 4 IBLA 464 (Feb. 1, 1972)

Jean Oakason, John Oakason, 4 IBLA 472 (Feb. 10, 1972)

An appeal to the Board of Land Appeals will be dismissed where the appellant did not timely file the notice of appeal in the proper office.

Heirs of Henry E. Covington, Deceased, 4 IBLA 466 (Feb. 4, 1972)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal and complies with the requirements of the decision being appealed.

American Nuclear Corporation, 4 IBLA 469 (Feb. 10, 1972)

Where the State Director, Bureau of Land Management, reports that his decision was premised upon an erroneous report and requests return of the case for further consideration, and the Board determines that no interest of the United States will be prejudiced thereby, the decision appealed from will be vacated, the appeal dismissed and the case remanded for further appropriate action.

Jewell S. Loyd, 4 IBLA 327 (Feb. 14, 1972)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal.

Hub Lumber Company, 5 IBLA 405 (Feb. 25 , 1972)

Mountain States Telephone & Telegraph Company, 5 IBLA 414 (Apr. 14, 1972)

M. P. Rowland, 6 IBLA 502 (May 10, 1972)

Foundation Land and Cattle Company, 6 IBLA 534 (June 8, 1972)

A motion to dismiss will be granted where the record on the motion shows that the Government has been prejudiced by the contractor's delay of at least nine years in presenting notices of claims, or by failing to present to the contracting officer for that period of time data with respect to claims as to which notice was initially given. Eggers & Higgins v. United States, 185 Ct. Cl. 765 (1968).

In the absence of a contract provision authorizing a contract price adjustment for delay, claims for pay-for-delay are breach of contract claims not within the Board's jurisdiction.

Where claims presented on appeal by the contractor are in fact claims of subcontractors which, on the record, appear barred as enforceable claims against the contractor by a state statute of limitations, they will be dismissed.

Appeal of Mishara Construction Company, Inc., IBCA-869-8-70 (Mar. 13, 1972) 79 I.D. 57

An appeal to the Board of Land Appeals must be dismissed where the notice of appeal, although received during the 10-day grace period, was not transmitted until after the expiration of the 30-day period in which it was required to be filed.

R & F Enterprises, 5 IBLA 411 (Mar. 31, 1972)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the application that was the subject of the appeal.

Patrick J. McDonough, 5 IBLA 413 (Apr. 3, 1972)

A formal motion for summary dismissal may be granted where the appellant failed to serve the adverse party with a copy of the statement of reasons for appeal within the time prescribed by regulation, notwithstanding that tardy service was attempted after the filing of the motion.

United States v. Cornelius D. Sullivan (aka Corney Sullivan) and Josie L. Sullivan, 5 IBLA 275 (Apr. 3, 1972)

An order of a hearing examiner dismissing an appeal to him, involving the partial rejection of a grazing nonuse application, which order was based upon the willful nonappearance of the appellant or his representative at the hearing scheduled, will be sustained.

Ben H. Lyon Estate v. State Director of Idaho, 5 IBLA 327 (Apr. 17, 1972)

Where the Bureau of Land Management fails to consider information, or where new information comes to light which may result in favorable action, the land office decision will be vacated and the case remanded.

Joseph C. Bartas, 5 IBLA 415 (Apr. 20, 1972)

An appeal will be dismissed when the appellant withdraws the appeal.

Esdras Hartley, 5 IBLA 416 (Apr. 21, 1972)

Where the evidence of record justifies reinstatement of the appellant's lease, the land office decision will be vacated and the case remanded for appropriate action.

F. S. Digrappa, 5 IBLA 417 (Apr. 25, 1972)

An appeal will be dismissed when the appellant withdraws the application which was the subject of the appeal.

E. R. and K. S. Coughlin, 6 IBLA 501 (May 8, 1972)

Where an appeal record disclosed the existence of various disputes clearly cognizable under specific provisions of a contract for the construction of a dam, the Board is not deprived of jurisdiction over such disputes by virtue of the contractor's contention that they merged into and became part of a unitary, integrated claim for a "cardinal breach" arising out of the Government's course of conduct for which only the Court of Claims could grant adequate relief, since it is not for a board of contract appeals to determine that the cumulative

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

effect of claims redressable under various contract clauses, combined with other acts and non-acts of the Government traditionally regarded as breaches of contract, constitute a unitary, integrated claim for a breach of contract.

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

Where the Bureau of Land Management states that the decision appealed from is in error and requests that the case be returned for further development and consideration, the decision appealed from will be vacated and the case remanded.

H. F. & Orest A. Gerbaz, 6 IBLA 504 (May 12, 1972)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the application which was the subject of the appeal.

Leprechaun Mining and Chemical, Inc., 6 IBLA 510 (May 23, 1972)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time allowed.

Paul L. Engel and Gottfriede Engel, 6 IBLA 512 (June 5, 1972)

Appeals to the Board of Land Appeals will be dismissed when the appellant withdraws the applications which were the subject of the appeals.

Malcolm F. Justice, Jr., 6 IBLA 532 (June 6, 1972)

Where an appeal is taken from a decision denying an extension of oil and gas leases, and the period of the requested extension has expired, the appeal is moot and is dismissed.

Ashland Oil, Inc., et al., 6 IBLA 187 (June 15, 1972)

Appeals to the Board of Land Appeals will be dismissed when the appellant withdraws the applications which were the subject of the appeals.

B. H. Wierick, 6 IBLA 538 (June 16, 1972)

An appeal will be dismissed where the appellant did not timely file the notice of appeal in the proper office.

Gerald D. Heden, 6 IBLA 291 (July 6, 1972)

Claims for costs attributed to Government delays in relocating utility poles and in providing slope stakes arising on a project for the construction of a portion of the Natchez Trace Parkway (together with a derivative claim for stretchout and other delay costs) are dismissed

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

as not within the purview of the Board's jurisdiction absent a pay-for-delay provision in the contract under which the claims would be cognizable.

Appeal of John H. Moon & Sons, IBCA-815-12-69 (July 31, 1972) 79 I.D. 465

Where an appeal has been dismissed because it is deemed moot, and new facts adduced show that the appeal is justiciable, the appeal is properly considered on its merits.

Ashland Oil, Inc., et al., 7 IBLA 58 (Aug. 9, 1972) 79 I.D. 532

Where four claims are asserted affirmatively for the first time in a notice of appeal and where thereafter the contractor fails to appeal the subsequent decision of the contracting officer denying the claims so asserted, the contracting officer's decision is final and conclusive under the express language of the Disputes Clause thereby requiring the dismissal of the four claims for lack of jurisdiction.

Appeal of C.I.C. Construction, IBCA-941-11-71 (Sept. 26, 1972) 79 I.D. 607

An Administrative Law Judge properly dismissed an appeal by a grazing applicant which failed to state clearly and concisely why a district manager's decision was in error, and afforded no basis for a hearing.

Eldon L. Smith, 8 IBLA 86 (Nov. 3, 1972)

A claim asserted under the Suspension of Work clause for costs arising out of a delay in performance of a construction contract caused by the exhaustion of available funds following the Government's failure to appropriate additional monies necessary to enable a contractor to complete the work prior to the time established by the contract and the President's subsequent impounding of such funds, which resulted in the contractor's election to stop work, was dismissed as being outside the Board's jurisdiction since the contract provided that the Government's liability for work costing in excess of a specified amount reserved and available for payment was contingent upon further appropriations and reservation, and the President's action was a sovereign act taken to halt inflation, neither of which is considered to be a stoppage by actual or constructive direction of the contracting officer in the administration of the contract within the meaning of the Suspension of Work clause.

Appeal of Granite Construction Company, IBCA-947-1-72 (Nov. 13, 1972) 79 I.D. 644

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of

The filing of a court action to review a decision of this Department does not automatically suspend the effect of the decision. This Board, however, may order a suspension of the decision during the pendency of the court action if justice will thereby be served. If the action challenges the assessment of damages for a grazing trespass, unless the court orders otherwise, the grazing applicant's failure to pay the assessed damages will generally continue to serve as a bar to the issuance of any privileges to him until or unless the court finds the damages should not be assessed.

Eldon L. Smith, 5 IBLA 330 (Apr. 18, 1972)
79 I.D. 149

Extensions of Time

Where the Government was found to be responsible for an indeterminate portion of a delay in having utility poles relocated on a road construction job and information having a direct bearing on the propriety of the amount of liquidated damages assessed was either in the possession of the Government or more accessible to it than it was to the appellant, no attempt should be made to apportion the delay between the parties and the Board therefore holds that the appellant is entitled to have the contract time extended to the date the contract was determined to be substantially complete.

Appeal of John H. Moon & Sons, IBCA-815-12-69
(July 31, 1972) 79 I.D. 465

Failure to Appeal

Where four claims are asserted affirmatively for the first time in a notice of appeal and where thereafter the contractor fails to appeal the subsequent decision of the contracting officer denying the claims so asserted, the contracting officer's decision is final and conclusive under the express language of the Disputes Clause thereby requiring the dismissal of the four claims for lack of jurisdiction.

Appeal of C.I.C. Construction, IBCA-941-11-71
(Sept. 26, 1972) 79 I.D. 607

Hearings

In the absence of a Board rule requiring that the Board member who presided at the hearing of an appeal prepare or participate in the decision, the failure of the Board to assign the preparation of an opinion to a retired, former member who conducted the hearing is not a violation of a contractor's constitutional rights, even where credibility and the demeanor of witnesses are in issue, since procedural due process requires only that all of the testimony, exhibits, briefs and other documentary material in the record be carefully reviewed and considered by the members of the Board rendering the decision.

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

Where, under a contract for the construction of a dam calling for excavation of a cutoff trench to sound rock (shown on the plans and specifications to be at a depth of 60 feet), the Government erroneously staked the depth of the trench before rock was ultimately reached at 60 feet, and the contracting officer issued a change order to compensate the contractor, inter alia, for the increased cost of dewatering the trench, the contractor contended that the amount allowed was inadequate, answers by an officer of the contractor to interrogatories propounded in a lawsuit against it by the dewatering sub-subcontractor arising out of this work, which refer to the failure and inadequacy of the sub-subcontractor's dewatering equipment and plan of dewatering are admissible as judicial admissions against interest by the contractor on the question of the contractor's entitlement to further compensation for dewatering difficulties allegedly resulting from the erroneous staking.

During an appeal taken under a contract for the construction of a tunnel, where the accuracy of certain benchmarks established by the Government is in issue, a survey performed by the Government after the work was completed in the course of the hearing of the appeal is admissible into evidence, since a substantial identity between the conditions which actually existed at the time the controversy arose and the subsequent conditions was established.

In an appeal in which the quantity of open cut excavation performed by a contractor is in issue, where the contractor has introduced into evidence a series of 28 plats with an explanation purporting to demonstrate Government survey errors relating to open cut excavation, Government analyses of such documents are admissible. Since a contract appeals board has substantial latitude in the area of admission or exclusion of evidence, where the Board must deal with a complex, voluminous record, the Board will exercise that discretion and admit into evidence those items that appear designed to enhance its understanding of the issues and to assist it materially in the performance of its functions.

Steenberg Construction Company, IBCA-520-10-65
(May 8, 1972) 79 I.D. 158

Although there is no right to a formal hearing on a protest against an omitted lands survey, the Board of Land Appeals may, in its discretion, order a hearing on the factual issues where warranted by the circumstances.

Utah Power and Light Company, 6 IBLA 79
(May 22, 1972) 79 I.D. 397

A request for a hearing in connection with an appeal will not be granted where undisputed facts are of record, and the determination rests on legal conclusions based on such facts.

Starling Brokers, et al., 6 IBLA 237 (June 26, 1972)

A request for a hearing and motions for certain pretrial procedures will be denied where the record contains all information necessary for proper legal determinations.

William B. Murray and Chris Palzer, 7 IBLA 158
(Aug. 30, 1972)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

A request for a hearing and motions for certain pretrial procedures will be denied where the appellant offers no reasons to warrant a hearing and the record contains the public land status information necessary for proper legal determinations.

Bertil A. Granberg, 7 IBLA 162 (Aug. 31, 1972)

A request for a hearing and motions for certain pretrial procedures will be denied where the record contains the public land status information necessary for proper legal determinations, and no useful purpose would be served by a hearing.

Bertil A. Granberg, 7 IBLA 174 (Sept. 1, 1972)

Under the Administrative Procedure Act the record made at a hearing constitutes the exclusive record for decision except to the extent official notice of facts may be taken. Further evidence presented on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision, but may only be considered to determine if there should be a further hearing.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

Service on Adverse Party

A formal motion for summary dismissal may be granted where the appellant failed to serve the adverse party with a copy of the statement of reasons for appeal within the time prescribed by regulation, notwithstanding that tardy service was attempted after the filing of the motion.

United States v. Cornelius D. Sullivan (aka Corney Sullivan) and Josie L. Sullivan, 5 IBLA 275 (Apr. 3, 1972)

Standing to Appeal

A transferee of a mining claim declared void ab initio by a decision of the Bureau of Land Management has standing to appear before the Board of Land Appeals in an appeal proceeding from that decision.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

Appeals from Bureau of Land Management decisions, which are not dispositive of the ultimate issues, will not be considered. They are properly dismissed as premature unless permission to appeal is first obtained from the Board of Land Appeals upon a showing that an immediate appeal may materially advance the final decision.

Anna A. Madros, 7 IBLA 323 (Sept. 26, 1972) 79 I.D. 606

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

An operator, holding under an approved assignment of operating rights, may appeal from a decision that an oil and gas lease expired by operation of law even though the operator was not listed as a party in the decision appealed from.

Kirkpatrick Oil & Gas Company, Beard Oil Company, John M. Beard, Bruce Anderson, 8 IBLA 108 (Nov. 13. 1972)

Statement of Reasons

Where an appellant states that he questions the validity of a decision and is bewildered by it without pointing out wherein the decision appealed from is believed to be erroneous, he has failed to file a statement of reason for his appeal as required by the rules of practice and the appeal will be dismissed.

Duncan Miller, 6 IBLA 507 (May 17, 1972)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time allowed.

Paul L. Engel and Gottfriede Engel, 6 IBLA 512 (June 5, 1972)

A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed and the appeal will be dismissed.

United States v. Lewis Maus and Frank G. Morrison 6 IBLA 164 (June 14, 1972)

An appeal will be dismissed when the appellant fails to file a statement of reasons for his appeal.

John Oakason, 6 IBLA 537 (June 16, 1972)

Timely Filing

An appeal to the Board of Land Appeals must be dismissed where the notice of appeal, although received during the 10-day grace period, was not transmitted until after the expiration of the 30-day period in which it was required to be filed.

R. M. Barton, 4 IBLA 464 (Feb. 1, 1972)

Jean Oakason, John Oakason, 4 IBLA 472 (Feb. 10, 1972)

An appeal to the Board of Land Appeals will be dismissed where the appellant did not timely file the notice of appeal in the proper office.

R. M. Barton, 7 IBLA 401 (July 27, 1972)

EVIDENCE

In a government mining contest, where the contestant had made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a

RULES OF PRACTICE--Continued

EVIDENCE--Continued

valuable mineral deposit sufficient to support a discovery is upon the claimant, and he cannot secure a determination that the claim is valid merely by attempting to discredit the government's witness.

Testimony by a government mineral examiner that he examined a mining claim and the workings thereon but found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the government of lack of discovery.

United States v. L. B. McGuire, 4 IBLA 307 (Feb. 4, 1972)

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

Don E. Jonz, 5 IBLA 204 (Mar. 20, 1972)

An assay report which is not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed cannot be given substantial evidential weight.

United States v. Ray Guthrie, et al., 5 IBLA 303 (Apr. 14, 1972)

Where, under a contract for the construction of a dam calling for excavation of a cutoff trench to sound rock (shown on the plans and specifications to be at a depth of 60 feet), the Government erroneously staked the depth of the trench before rock was ultimately reached at 60 feet, and the contracting officer issued a change order to compensate the contractor, inter alia, for the increased cost of dewatering the trench, the contractor contended that the amount allowed was inadequate, answers by an officer of the contractor to interrogatories propounded in a lawsuit against it by the dewatering sub-subcontractor arising out of this work, which refer to the failure and inadequacy of the sub-subcontractor's dewatering equipment and plan of dewatering are admissible as judicial admissions against interest by the contractor on the question of the contractor's entitlement to further compensation for dewatering difficulties allegedly resulting from the erroneous staking.

Where a contractor under a contract calling for the construction of a tunnel and an access shaft extending 200 feet downward from ground surface to the gate chamber in the tunnel excavated the shaft by means of blasting, and subsequently the Government redesigned the shaft, in part due to a funnel-shaped excavation caused by the contractor's blasting technique, the contractor is not entitled to be compensated for the cost of refilling the funnel-shaped excavation since the record does not establish that such cost is attributable to a changed condition rather than to the contractor's blasting methods.

During an appeal taken under a contract for the construction of a tunnel, where the accuracy of certain benchmarks established by the Government is in issue, a survey performed by the Government after the work was completed in the course of the hearing

RULES OF PRACTICE--Continued

EVIDENCE--Continued

of the appeal is admissible into evidence, since a substantial identity between the conditions which actually existed at the time the controversy arose and the subsequent conditions was established.

In an appeal in which the quantity of open cut excavation performed by a contractor is in issue, where the contractor has introduced into evidence a series of 28 plats with an explanation purporting to demonstrate Government survey errors relating to open cut excavation, Government analyses of such documents are admissible. Since a contract appeals board has substantial latitude in the area of admission or exclusion of evidence, where the Board must deal with a complex, voluminous record, the Board will exercise that discretion and admit into evidence those items that appear designed to enhance its understanding of the issues and to assist it materially in the performance of its functions.

A contractor whose work was disrupted and damaged as a result of the bursting of an oil pipeline (owned by a third party), which ran under the contract site and over which the contractor had, with the Government's approval, located its concrete batching plant, was not entitled to be compensated by the Government for the damage sustained on the ground that the damage resulted from the Government's failure to discharge its implied contractual obligation to provide a proper and safe construction site, in the absence of proof that the Government was responsible for the bursting, since the contractor bore the risk of loss under the Permits and Responsibilities clause of the contract.

A contractor in an appeal having a massive record, who alleges instances of inadequate payment under a contract for the construction of a dam, and in support thereof introduces into evidence various Government payment books unpaginated and some seven inches in thickness without clearly establishing such allegations by further specification or identification in such books, has not sustained its burden of proof, since it was not incumbent upon the Board to search the record "for errors that may be lurking among the labyrinths."

Recovery by a contractor under a contract for the construction of a dam who alleged that all of its claims against the Government were inseparable and that payment should be made on the basis of its total expenditures less contract receipts is denied where the contractor's records were such that allocation of costs to specific claims could be made and the reasonableness of such total costs and the Government's responsibility therefor were not established. In such circumstances the Board found that resort to the jury verdict approach for determining the amount of the equitable adjustment was warranted, since the Government's evidence respecting costs was also not segregated to specific claims.

Steenberg Construction Company, IBCA-520-10-65 (May 8, 1972) 79 I.D. 158

A report of field examination is not evidence on which a desert land final proof may be rejected and the entry cancelled. Where final proof asserts full compliance with the law, and its showings are questioned, a contest complaint should be initiated to afford the entryman an opportunity for a hearing.

Calvin L. Howard, 6 IBLA 285 (June 30, 1972)

Despite factual concessions by counsel for the Government, the Board is not precluded from

RULES OF PRACTICE--Continued

EVIDENCE--Continued

reviewing the entire record and determining whether, and to what extent, rights have been earned under the public land laws.

United States v. William Leonard Grediagin, 7 IBLA 1 (July 24, 1972)

Where the Government was found to be responsible for an indeterminate portion of a delay in having utility poles relocated on a road construction job and information having a direct bearing on the propriety of the amount of liquidated damages assessed was either in the possesssion of the Government or more accessible to it than it was to the appellant, no attempt should be made to apportion the delay between the parties and the Board therefore holds that the appellant is entitled to have the contract time extended to the date the contract was determined to be substantially complete.

Appeal of John H. Moon & Sons, IBCA-815-12-69 (July 31, 1972) 79 I.D. 465

A mining contestee is the true proponent under the Administrative Procedure Act that his claim is valid and, therefore, has the burden of overcoming the Government's prima facie case of no discovery with a preponderance of the evidence.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

The Government is not obligated to affirmatively prove that the land in a mining claim is nonmineral or that no discovery exists; if the Government's mineral examiner testifies that he examined a mining claim and found no evidence of a valuable mineral deposit, the Government has established a prima facie case of lack of discovery.

United States v. Cecil R. Blomquist, Administrator of the Estate of Frank Blomquist, et al., 7 IBLA 351 (Sept. 28, 1972)

The Board, as the delegate of the Secretary of the Interior, is obliged to consider everything contained in the record in determining all matters relevant to the issues in the matter.

United States v. Leonard F. Nelson, 8 IBLA 294 (Dec. 6, 1972)

An assay report which is not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed cannot be given substantial evidential weight.

United States v. George Avgeris, 8 IBLA 316 (Dec. 7, 1972)

Where the Government refused prior to a hearing on its contest against mining claims to divulge the results of assays and beneficiation tests there was no unfair surprise at the hearing when the contestee failed to request a continuance after the evidence was presented. The failure to make such a request constituted a waiver of the contestee's

RULES OF PRACTICE--Continued

EVIDENCE--Continued

original objection to proceeding with the hearing before he could examine all of the Government's reports and information on the claims.

United States v. E. Roy Grigg, 8 IBLA 331 (Dec. 8, 1972) 79 I.D. 682

The weight and credibility of evidence are matters properly considered by an Administrative Law Judge in the first instance. His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be disturbed.

United States v. Humboldt Placer Mining Company and Del De Rosier, 8 IBLA 407 (Dec. 20, 1972)

GOVERNMENT CONTESTS

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee presents no direct or rebuttal evidence.

United States v. Delbert G. Oxford, Dorothy M. Oxford, 4 IBLA 236 (Jan. 10, 1972)

Where the Secretary assumed jurisdiction of a mining claim contest by directing that the hearing examiner forward a recommended decision directly to the Department level, the Secretary was not bound by such directive to decide the case and it was not a violation of due process to return the case to the Director of the Bureau of Land Management to render the initial decision under the then prevailing adjudicative procedure.

United States v. Neil Stewart, 5 IBLA 39 (Feb. 28, 1972) 79 I.D. 27

Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestee and the claim is properly declared null and void by the land office manager under the Department's regulations governing such contests, which allow no exception for appellant's alleged reasons of mistake, inadvertence and excusable neglect.

United States v. Robert B. Sainberg, 5 IBLA 270, (Mar. 31, 1972)

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

United States of America v. Charles W. Kohl and Cora A. Kohl, 5 IBLA 298 (Apr. 13, 1972)

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the claimant then has the burden of proof

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

to show by a preponderance of the evidence that a discovery has been made.

United States v. Ray Guthrie, et al., 5 IBLA 303 (Apr. 14, 1972)

Under the Department rules governing government contests against mining claims, a contestee is required to answer within 30 days after he is served with a copy of the contest complaint, and where he fails timely to file an answer to the allegations of the complaint, they will be taken as admitted and the mining claim which is subject of the contest is properly declared null and void without a hearing where one of the charges in the complaint alleges no discovery of a valuable mineral deposit.

"Community Property." With respect to unpatented mining claims in states recognizing community property laws, the husband represents the community interest of himself and also his wife, and as to such interest the wife is considered to be in privity with her husband, and where a government contest is brought against such an unpatented mining claim with only the husband named in the notice of contest and complaint, the wife is represented in said cause as though she had been expressly made a party thereto.

United States v. Melvin McCormick, 5 IBLA 382 (Apr. 28, 1972) 79 I.D. 155

In a Government contest against a mining claim where the Government has shown that the small market for dolomite useful for metallurgical purposes is being met by more competitive sources than the claim, the contestee then has the burden of proof to show by a preponderance of the evidence that the dolomite could be marketed at a profit for such purposes.

United States v. Richard M. Lease, 6 IBLA 11 (May 10, 1972) 79 I.D. 379

A mining claimant has not been denied due process when his claims are contested assertedly because a permit has been granted to a museum to perform archaeological work under the Antiquities Act, and where there was some prehearing newspaper publicity that the contest was being instituted but the claimant does not show that there was any unfairness in the contest proceeding itself.

United States v. Glen S. Gunn, et al., 7 IBLA 237 (Sept. 15, 1972) 79 I.D. 588

A mining claim is properly declared invalid where the government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

United States v. Curtis H. Springer, et al., 8 IBLA 123 (Nov. 14, 1972)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

A mining claim is properly declared null and void when contestee fails to answer timely a government contest complaint which charged that there had not been a discovery within the claim, and the complaint and regulation provide that failure to answer within 30 days will be taken as an admission of the allegations of the complaint.

United States v. Frank A. Spaulding and Wallace Spaulding, 8 IBLA 297 (Dec. 6, 1972)

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the claimant then has the burden of proof to show by a preponderance of the evidence that a discovery has been made.

United States v. George Avgeris, 8 IBLA 316 (Dec. 7, 1972)

Where the Government refused prior to a hearing on its contest against mining claims to divulge the results of assays and beneficiation tests there was no unfair surprise at the hearing when the contestee failed to request a continuance after the evidence was presented. The failure to make such a request constituted a waiver of the contestee's original objection to proceeding with the hearing before he could examine all of the Government's reports and information on the claims.

United States v. E. Roy Grigg, 8 IBLA 331 (Dec. 8, 1972) 79 I.D. 682

The issuance of a final certificate to a mining claim, or a determination of the status of the claim under section 5 of the Surface Resources Act, 30 U.S.C. § 613 (1970), does not preclude the Department from challenging the validity of the claim in a subsequent proceeding on any ground it may deem appropriate, since until the moment patent is issued the Department retains jurisdiction, after adequate notice and upon proper opportunity for hearing, to adjudicate the validity of mining claims on the public lands.

The provisions of section 8(c) of the Administrative Procedure Act, 5 U.S.C. § 557(c) (1970), prescribing findings and conclusions on all "the material issues of fact, law, or discretion presented on the record," with "the appropriate rule, order, sanction, relief, or denial thereof," and the regulations governing contest proceedings involving mining claims, 43 CFR 4.425-8(b) (1972), do not require that an Administrative Law Judge make a ruling on a charge in a contest complaint that land is nonmineral in character, where he rules on another issue which is dispositive of the controversy.

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

mineral deposit within a mining claim, claimant then has the burden of showing with a preponderance of the evidence that a discovery has been made.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

In a Government contest inquiring into the validity of mining claims, a finding of lack of discovery of a valuable mineral deposit determines that the claims are invalid, and an Administrative Law Judge errs after making such a finding in refusing to declare such claims to be invalid or null and void and in dismissing the Government's contest complaint.

United States v. Cascade Ornamental Building Stone, Inc., et al., 8 IBLA 447 (Dec. 29, 1972)

HEARINGS

A hearing will not be granted for the purpose of determining whether or not certain lands are known to contain workable deposits of phosphate where there does not appear to be a substantial question of fact but only a question of the sufficiency of the established facts to serve as the basis for a determination that the lands do contain workable deposits.

J. D. Archer, 4 IBLA 323 (Feb. 14, 1972)

A stipulation by a field solicitor at a hearing that the statutory requisites for the grant of a patent have been met does not preclude consideration in a further proceeding of any question vital to the determination of whether the requirements of the law have been met.

United States v. Henrietta Bunkowski and Andrew Julius Bunkowski, 5 IBLA 102 (Mar. 7, 1972) 79 I.D. 43

An order of a hearing examiner dismissing an appeal to him, involving the partial rejection of a grazing nonuse application, which order was based upon the willful nonappearance of the appellant or his representative at the hearing scheduled, will be sustained.

Ben H. Lyon Estate v. State Director of Idaho, 5 IBLA 327 (Apr. 17, 1972)

In an appeal from the rejection of an application to purchase a headquarters site an appellant's request for a hearing may be granted where disputed facts are alleged which, if proved, would warrant the granting of the relief sought.

Lucille M. Frederick, 6 IBLA 47 (May 16, 1972)

As section 20 of the right-of-way Act of March 3, 1891, requires forfeiture of the grant to the extent improvements are not completed within five years from the grant, this Department cannot extend the time to construct the right-of-way improvements.

To cancel a right-of-way granted under the Act of March 3, 1891, the grantee should be

RULES OF PRACTICE--Continued

HEARINGS--Continued

given notice of the grounds for the cancellation and the opportunity for a hearing if he disputes the facts.

Fred Markle, 6 IBLA 52 (May 18, 1972)

Although there is no right to a formal hearing on a protest against an omitted lands survey, the Board of Land Appeals may, in its discretion, order a hearing on the factual issues where warranted by the circumstances.

Utah Power and Light Company, 6 IBLA 79 (May 22, 1972) 79 I.D. 397

The Bureau of Land Management's rejection of an application to purchase a trade and manufacturing site will be set aside on appeal where the applicant requests a hearing, asserts that he conducted a commercial enterprise on the claim, and has alleged sufficient facts in support of the application to warrant a hearing before there can be a determination that the requirements of the law have not been met.

Lance H. Minnis, 6 IBLA 94 (May 23, 1972)

Objection as to want of authority of Department of Agriculture attorney to appear before department hearing examiner in a national forest mining claim contest should be raised promptly before the hearing examiner.

United States of America v. Raymond Bass, Betty Yeck, et al., 6 IBLA 113 (June 5, 1972)

A request for a hearing will be denied where it does not appear that a hearing would develop any facts material to the ultimate disposition of the case.

Barney R. Colson, 7 IBLA 40 (Aug. 1, 1972)

In a Departmental proceeding to determine the validity of a mining claim, an evidentiary hearing under the Administrative Procedure Act is required only if there is a disputed determinative question of fact; where the validity of a claim turns on the legal effect to be given to facts of record determining the status of the land when the claim was located no hearing is required.

Under the Mining Claims Rights Restoration Act of 1955, public land within a preliminary permit issued by the Federal Power Commission under the Federal Power Act is not open to entry under the mining laws; a mining claim located after the permit has issued is properly declared void ab initio without a hearing.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

The Bureau of Land Management, without holding an evidentiary hearing, may properly declare that mining claims were null and void ab initio when they were located while land was within a power site withdrawal and no rights therein could be based upon the

SCRIP--Continued

VALIDITY

The right to locate Sioux Half-Breed scrip is a personal right, not subject to transfer. Although such scrip may be located by an attorney in fact with authority from the scripee to locate land in the name of the scripee, such authority is revoked upon death of the scripee.

One who never acquired rights from the original scripee or by substitution to select and locate land under the scrip certificate in the name of the scripee is not entitled to receive any cash payment for redemption of Sioux Half-Breed scrip certificates.

Barney R. Colson, 7 IBLA 40 (Aug. 1, 1972)

SECRETARY OF THE INTERIOR

Under the general principles of equitable adjudication an applicant for purchase of a trade and manufacturing site claim who filed his application 2 days after the expiration of the 5 year statutory period allowed for such filing may have his claim adjudicated on its merits. 43 U.S.C. § 687a-1 (1970).

C. Rick Houston, 5 IBLA 71 (Mar. 1, 1972)

Under principles of equitable adjudication embodied in 43 CFR 1871.1-7 (1972), a desert land entrywoman who fails personally to make final proof of claim within the period provided may be permitted to present her proof and have her claim adjudicated on its merits, where the reason for her delay is compelling.

Warrine F. Harden, 5 IBLA 194 (Mar. 15, 1972)

The regulation, 43 CFR 3112.1-1 (1972), prescribing that no oil and gas offers for lands in terminated or canceled leases will be received until the records have been noted and the lands have been posted in accordance with 3112.1-2 (1972) is a valid exercise of the Secretary's authority to prescribe rules and regulations under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 et seq. (1970).

Rose Mary Johnson, et al., 5 IBLA 279 (Apr. 13, 1972)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands and to extend or correct the surveys of public lands, as necessary, to include lands omitted from earlier surveys.

Utah Power and Light Company, 6 IBLA 79 (May 22, 1972) 79 I.D. 397

A prospecting application, filed under the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), may be granted only where the lands are not known to contain valuable deposits of mineral. The determination whether a specific tract of land is subject to the issuance of a prospecting permit or of a mineral lease is committed to the Secretary. In making such a determination, the Secretary is entitled to rely upon advice furnished by his technical representative, the Director of the Geological Survey.

SECRETARY OF THE INTERIOR--Continued

Lloyd K. Johnson, 8 IBLA 73 (Oct, 27, 1972)

The Board, as the delegate of the Secretary of the Interior, is obliged to consider everything contained in the record in determining all matters relevant to the issues in the matter.

United States v. Leonard F. Nelson, 8 IBLA 294 (Dec. 6, 1972)

SETTLEMENTS ON PUBLIC LANDS

By section 5 of the Act of April 29, 1950, occupancy of a trade and manufacturing site claim prior to a notice of settlement will not be considered as meeting the occupancy requirements of the trade and manufacturing site law; the Act of April 29, 1950, however, does not bar consideration of improvements made prior to the notice of settlement in determining whether there are the required improvements needed to purchase a trade and manufacturing site.

Lance H. Minnis, 6 IBLA 94 (May 23, 1972)

By section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), occupancy of a homesite claim prior to the filing of a notice of settlement or of an application to purchase will not be considered as meeting the occupancy requirements of that law.

Charlotte Lorraine (Pontz) Furgione, 8 IBLA 432 (Dec. 21, 1972)

SMALL TRACT ACT

GENERALLY

Where the claimant of an unpatented mining claim, using the claim for recreational purposes, was found to be an unqualified applicant under the Mining Claim Occupancy Act on the ground that he could not meet the residence requirement, it was proper and correct for the land office to offer him a one-year renewable lease for a .75-acre tract containing his improvments where it is determined that the land has public interest value for recreation, and state and county agencies have requested that it be retained in Federal ownership for recreation purposes.

Gene D. Kale, 6 IBLA 1 (May 8, 1972)

LANDS SUBJECT TO

Where the claimant of an unpatented mining claim, using the claim for recreational purposes, was found to be an unqualified applicant under the Mining Claim Occupancy Act on the ground that he could not meet the residence requirement, it was proper and correct for the land office to offer him a one-year renewable lease for a .75-acre tract containing his improvments where it

SMALL TRACT ACT--Continued

LANDS SUBJECT--Continued

is determined that the land has public interest value for recreation, and state and county agencies have requested that it be retained in Federal ownership for recreation purposes.

Gene D. Kale, 6 IBLA 1 (May 8, 1972)

SODIUM LEASES AND PERMITS

PERMITS

Failure by an applicant to respond to a Bureau of Land Management State Office letter inquiring only whether the applicant is still interested in receiving a prospecting permit is not on adequate ground for rejection of the applicants' prospecting permit application.

Phyllis Colman and William J. Colman, 8 IBLA 444 (Dec. 27, 1972)

SOLDIERS' ADDITIONAL HOMESTEADS

GENERALLY

A soldier's additional homestead application will be rejected when the applicant cannot establish the identity of the serviceman and the original entryman as the same person.

George Rodda, Jr., 7 IBLA 79 (Aug. 16, 1972)

STATE EXCHANGES

EFFECT OF APPLICATION

A regulation, 43 CFR 2013.2-4(1970), now substantially embodied in 43 CFR 2091.2-3 (1972), which provides that the filing of a valid application for state exchange segregates the selected lands from the filing of applications, the allowance of which is discretionary, is effective to preclude the acceptance of such applications.

Tom B. Boston, 6 IBLA 269 (June 29, 1972)

STATE SELECTIONS
(See also School lands, Swamplands)

A homestead application must be rejected when filed at a time when the Master Title Plat in the local Bureau of Land Management office shows prima facie that the lands are embraced in a state selection application and the serial register sheet, referred to

STATE SELECTIONS--Continued

on the plat, shows that tentative approval has been given to the state selection for those lands.

State of Alaska, Kenneth D. Makepeace, 6 IBLA 58 (May 22, 1972) 79 I.D. 391

STATUTORY CONSTRUCTION

GENERALLY

Congress intended that the automatic termination provision of 30 U.S.C. § 188 (1970) apply to the regular, annual rental payment, the necessity for which a lessee had continuous notice and that provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued.

Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 7 (Feb. 18, 1972) 79 I.D. 17

Congress intended that the automatic termination provision of 30 U.S.C. § 188 (1970) apply to the regular annual rental payment, the necessity for which a lessee had continuous notice. That provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued.

Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 16 (Feb. 18, 1972) 79 I.D. 21

A statute, Act of February 25, 1920, c. 85, 41 Stat. 439, 30 U.S.C. § 203 (1970) which requires that lands included in an application for modification be contiguous to the original lease, must be followed, despite assertions that considerations of public interest indicate otherwise.

The Kemmerer Coal Company, 5 IBLA 319 (Apr. 14, 1972)

The admission of Alaska into the Union did not repeal the statutes particularly applicable to that state, not related to its former territorial government. Therefore, sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) [formerly 48 U.S.C. § 421 (1958)] is still in effect, despite the existence of the general timber authorization contained in 30 U.S.C. § 601 (1970). The latter Act is deemed to be inapplicable to small sales of timber in Alaska since its authority is limited to situations where the disposition of the timber "* * * is not otherwise expressly authorized by law."

Andrew W. Miscovich, 6 IBLA 100 (May 31, 1972) 79 I.D. 410

STATUTORY CONSTRUCTION--Continued

GENERALLY--Continued

The Act of April 29, 1950, requiring the filing of a notice of location or a purchase application before an occupant of a trade and manufacturing site can be given credit for his occupancy, does not work an unlawful forfeiture of an occupancy right.

Kennecott Copper Corporation, 8 IBLA 21 (Oct. 6, 1972) 79 I.D. 636

IMPLIED REPEALS

Repeal by implication is not favored and will not be considered unless there is an irreconcilable conflict between an earlier and a later statute.

Peabody Coal Company, 4 IBLA 303 (Feb. 4, 1972)

The admission of Alaska into the Union did not repeal the statutes particularly applicable to that state, not related to its former territorial government. Therefore, sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) [formerly 48 U.S.C. § 421 (1958)] is still in effect, despite the existence of the general timber authorization contained in 30 U.S.C. § 601 (1970). The latter Act is deemed to be inapplicable to small sales of timber in Alaska since its authority is limited to situations where the disposition of the timber "* * * is not otherwise expressly authorized by law."

Andrew W. Miscovich, 6 IBLA 100 (May 31, 1972) 79 I.D. 410

LEGISLATIVE HISTORY

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for that purpose.

Frederick Siemon, 6 IBLA 156 (June 8, 1972)

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for the purpose.

Lester J. Gendron, 6 IBLA 288 (July 3, 1972)

Lands which constitute the bed or bank are situated within a quarter mile of any river listed in sec. 5(a) of the Wild and Scenic Rivers Act as a potential addition to the wild and scenic river system are open to mineral leasing, subject to the discretion of the Secretary and to such conditions as he may impose.

Signal Oil & Gas Co., 8 IBLA 14 (Oct. 5, 1972)

STATUTORY CONSTRUCTION--Continued

LEGISLATIVE HISTORY--Continued

Lands which constitute the bed or bank or are situated within a quarter mile of the bank of any river listed in sec. 5(a) of the Wild and Scenic Rivers Act as a potential addition to the wild and scenic river systems are open to mineral leasing, subject to the discretion of the Secretary and to such conditions as he may impose.

Signal Oil & Gas Co., 8 IBLA 150 (Nov. 20, 1972)

Since § 9(d) of the Wild and Scenic Rivers Act withdraws from mineral location only lands which constitute the bed or bank or are situated within one-quarter mile of the bank of a river listed in § 5(a) as a potential addition to the wild and scenic rivers system, the designation pursuant to § 5(d) of that Act of a river area as one which federal agencies shall evaluate in their planning reports does not place the river in the category of a potential addition to the wild and scenic rivers system or withdraw the bed or banks of the river or lands within one-quarter mile of the bank of the river from mineral location.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

SURFACE RESOURCES ACT

GENERALLY

In a proceeding under section 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the use and management of the surface and its resources on certain gold mining claims, the issue is whether or not there is presently disclosed within the boundaries of each claim valuable minerals of sufficient quantity, quality, and value to constitute a discovery, and evidence to establish that the discovery was made prior to the effective date of the Act. 30 U.S.C. § 613.

Under section 5 of the Surface Resources Act of July 23, 1955, the effect of a decision that no mineral discovery has been shown is to permit the Government to manage and dispose of the vegetative and other surface resources without disturbing claimant's right to develop his gold mining claim by using the subsurface and surface to the extent necessary to conduct his mining operations. 30 U.S.C. § 613.

United States v. Fannie E. Lewis Trussel, 7 IBLA 225 (Sept. 11, 1972)

Only mining claimants who file the verified statement required by section 5(a) of the Act of July 23, 1955, are entitled to a notice of a hearing to determine rights to the surface resources of a mining claim.

United States v. Leslie R. Godwin, 8 IBLA 258 (Dec. 4, 1972)

The issuance of a final certificate to a mining claim, or a determination of the status of the claim under section 5 of the Surface Resources Act, 30 U.S.C. § 613 (1970), does not preclude the Department from challenging the validity

SURFACE RESOURCES ACT--Continued

GENERALLY--Continued

of the claim in a subsequent proceeding on any ground it may deem appropriate, since until the moment patent is issued the Department retains jurisdiction, after adequate notice and upon proper opportunity for hearing, to adjudicate the validity of mining claims on the public lands.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

APPLICABILITY

The issuance of a final certificate to a mining claim, or a determination of the status of the claim under section 5 of the Surface Resources Act, 30 U.S.C. § 613 (1970), does not preclude the Department from challenging the validity of the claim in a subsequent proceeding on any ground it may deem appropriate, since until the moment patent is issued the Department retains jurisdiction, after adequate notice and upon proper opportunity for hearing, to adjudicate the validity of mining claims on the public lands.

United States v. Nettie G. Harper, 8 IBLA 357 (Dec. 12, 1972)

HEARINGS

New evidence submitted subsequent to a hearing held pursuant to a Surface Resources Act proceeding cannot be considered in deciding the case on the merits but can only be considered to determine whether a further hearing is warranted. 30 U.S.C. § 613.

United States v. Fannie E. Lewis Trussel, 7 IBLA 225 (Sept. 11, 1972)

VERIFIED STATEMENT

A verified statement filed by a mining claimant pursuant to section 5 of the Act of July 23, 1955, 30 U.S.C. § 613 (1970), asserting rights to the surface resources on its mining claim is properly rejected where the statement is filed more than 150 days from the first date of the publication of notice to miners under section 5(a) of the Act.

St. Anthony Mines, Inc., 6 IBLA 159 (June 14, 1972)

SURVEYS OF PUBLIC LANDS

GENERALLY

In the interpretation of a patent for a Mexican private land grant in which the bank of a river is designated as one of the boundaries, the rule will be applied that where a call is from one point in a continuous object, natural or artificial, to another point in the same object, the line between and connecting the two points follows the sinuosities of such object, rather than a straight line connecting these points. The call for

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

courses and distances in a Government survey made subsequent to a Mexican private land grant which is at variance with sinuosities of a river bank must yield in case of doubt to the superior call to the natural monuments referred to as constituting the boundary of the claim.

Clarence H. Hunt, Mamie M. Hunt, 5 IBLA 389 (May 4, 1972)

In determining what land is conveyed under patents or grants of public land bordering on a meandered body of water, the general rule is that the waterline itself, not the meander line, constitutes the boundary except where there is fraud or gross error shown in the survey of the lines or where the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands and to extend or correct the surveys of public lands, as necessary, to include lands omitted from earlier surveys.

The action or inaction of Department employees cannot under the doctrines of estoppel or laches bar the Secretary of the Interior and his delegates from discharging their duty to determine if public lands have been omitted from an original survey and to survey those lands found to have been omitted.

Although there is no right to a formal hearing on a protest against an omitted lands survey, the Board of Land Appeals may, in its discretion, order a hearing on the factual issues where warranted by the circumstances.

Utah Power and Light Company, 6 IBLA 79 (May 22, 1972) 79 I.D. 397

The Department is authorized to correct prior surveys where fraud or gross error has occurred.

Where a government resurvey is challenged by an appellant, he has the burden of establishing that the resurvey is erroneous and of identifying specifically reversible error in the decision appealed from. An appellant cannot expect the Department to assume his burden of searching the record and the law in an effort to find some reversible error in the decision appealed from.

Mrs. J. W. Moore, 8 IBLA 261 (Dec. 5, 1972)

AUTHORITY TO MAKE

The subdivision of acquired lands of the United States into a rectangular system having aliquot parts similar to those employed in the public land surveys does not make the lands so designated "surveyed" within the ambit of the regulations under the Mineral Leasing Act for Acquired Lands when the plat of the survey has not been approved by the Director, Bureau of Land Management.

Arthur E. Meinhart, Irwin Rubenstein, Appellants, Bruce Anderson, Appellee, 6 IBLA 39 (May 12, 1972)

SURVEYS OF PUBLIC LANDS--Continued

AUTHORITY TO MAKE--Continued

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands and to extend or correct the surveys of public lands, as necessary, to include lands omitted from earlier surveys.

Utah Power and Light Company, 6 IBLA 79 (May 22, 1972) 79 I.D. 397

The Department is authorized to correct prior surveys where fraud or gross error has occurred.

Mrs. J. W. Moore, 8 IBLA 261 (Dec. 5, 1972)

SWAMPLANDS

The burden of proof as to character of lands applied for under the Swamp Land Act falls upon the applicant State.

Land not in esse within the State of California on September 28, 1850, is not subject to application by the State of California under the Swamp Land Act.

Land subject to periodic overflow of a temporary nature is not "swamp and overflowed land" within the meaning of the Swamp Land Act.

State of California, 8 IBLA 164 (Nov. 24, 1972)

TIMBER SALES AND DISPOSALS

A timber purchaser will be released from the harsh consequences arising from his contractual obligation where the decision to compel him either to perform or to pay damages was premised on a misconception of the latitude afforded the authorized officer by delegated authority, and where that decision was made in disregard of the best interests of the United States, contrary to the policy of this Department.

Irvin Pearce d/b/a Pearce Bros., 5 IBLA 373 (Apr. 24, 1972)

The Secretary of the Interior is authorized under sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) (1970) [formerly 48 U.S.C. § 421 (1958)], to promulgate regulations governing small sales of timber in Alaska which provide for competitive bidding. However, where regulations specifically provide for exclusively noncompetitive procedures for such sales, the general timber regulations, based upon 30 U.S.C. § 601 (1970) will be deemed not applicable.

The admission of Alaska into the Union did not repeal the statutes particularly applicable to that state, not related to its former territorial government. Therefore sec. 11 of the Act of May 14, 1898, as amended, 16 U.S.C. § 615(a) [formerly 48 U.S.C. § 421 (1958)] is still in effect, despite the existence of the general timber authorization contained in 30 U.S.C. § 601 (1970). The latter Act is deemed to be inapplicable to small sales of timber in Alaska since its authority is limited to situations

TIMBER SALES AND DISPOSALS--Continued

where the disposition of the timber "* * * is not otherwise expressly authorized by law."

Andrew W. Miscovich, 6 IBLA 100 (May 31, 1972) 79 I.D. 410

A request for extension of a timber sale contract is properly denied where the purchaser has not shown that its delay in cutting and removal was due to causes beyond its control.

Doyle Milling Company, Inc., 6 IBLA 190 (June 19, 1972)

A request for extension of a timber sale contract will not be granted where it appears that the purchaser was not delayed in cutting or removal through causes beyond his control and without his fault or negligence.

Andrew W. Miscovich, 6 IBLA 265 (June 29, 1972)

A timber sale is a lump-sum sale where the purchase price is not contingent on the volume of timber to be recovered. Where a timber sale contract provides for a lump-sum payment for removal of all trees marked with blue paint within a designated area, liability for payment may not be adjusted to the volume of the timber so designated and sold.

Where the BLM timber sale contract specifically disclaims the warranty as to volume, none arises.

A disclaimer of warranty of quantity in a BLM timber sale contract is not unconscionable pursuant to § 2-302 of the Uniform Commercial Code.

John D. Huffman, 7 IBLA 190 (Sept. 7, 1972) 79 I.D. 567

TORTS

GENERALLY

An allocation of grazing privileges constitutes an act in performance of a discretionary function for which the federal government is immune from suit under the Federal Tort Claims Act, 28 U.S.C. § 2680(a) (1970).

Eldon L. Smith, 6 IBLA 166 (June 14, 1972)

TORTS EXCEPTED FROM ACT

An allocation of grazing privileges constitutes an act in performance of a discretionary function for which the federal government is immune from suit under the Federal Tort Claims Act, 28 U.S.C. § 2680(a) (1970).

Eldon L. Smith, 6 IBLA 166 (June 14, 1972)

TRESPASS

GENERALLY

Grazing livestock on federal public lands in excess of the authorized permit use, or without an appropriate license or permit, constitutes trespass for which damages may properly be assessed.

TRESPASS--Continued

GENERALLY--Continued

Where an applicant for grazing privileges has failed to pay damages assessed by the Secretary of the Interior for a grazing trespass, a district manager properly conditioned approval of the applicant's application upon payment of his outstanding trespass damages.

Where an applicant has been denied grazing privileges because he has failed to pay trespass damages assessed by the Secretary of the Interior but, despite repeated warnings by Bureau of Land Management personnel, he willfully and repeatedly grazed his livestock in trespass, an Administrative Law Judge, following a hearing on a show cause notice, properly assessed trespass damages and suspended the applicant's grazing privileges until three years after payment of the damages.

Eldon L. Smith, 8 IBLA 86 (Nov. 3, 1972)

Where a grazing licensee with a record of ten trespass violations over a period of three years commits additional violations, all of which are deemed to be repeated trespasses, a reduction in grazing privileges may be imposed and a 20-percent reduction of two years is justified.

John E. Walton, 8 IBLA 237 (Nov. 29, 1972)

MEASURE OF DAMAGES

Where it has been determined that a grazing trespass on the Federal range is repeated or clearly willful, the value of the forage consumed shall be computed and assessed at $4 per animal-unit month, or twice the commercial rate if such amount is higher. Where the commercial rate is $4, the assessment of damages shall be at the rate of $8 per animal-unit month.

In calculating damages for trespass on the Federal range based upon the amount of forage consumed, whenever fractional animal-unit months are involved, their sum must be rounded upward to arrive at the total number of animal-unit months for which the damages are to be assessed.

John E. Walton, 8 IBLA 237 (Nov. 29, 1972)

WILD AND SCENIC RIVERS ACT

Lands which constitute the bed or bank or are situated within a quarter mile of any river listed in Sec. 5(a) of the Wild and Scenic Rivers Act as a potential addition to the wild and scenic river system are open to mineral leasing, subject to the discretion of the Secretary and to such conditions as he may impose.

Signal Oil & Gas Co., 8 IBLA 14 (Oct. 5, 1972)

Lands which constitute the bed or bank or are situated within a quarter mile of the bank of any river listed in Sec. 5(a) of the Wild and Scenic Rivers Act as a potential addition to the wild and scenic river systems are open to mineral leasing, subject to the discretion of the Secretary and to such conditions as he may impose.

Signal Oil & Gas Co., 8 IBLA 150 (Nov. 20, 1972)

Since § 9(d) of the Wild and Scenic Rivers Act withdraws from mineral location only lands which constitute the bed or bank or are situated within one-quarter mile of the bank of a river listed in § 5(a) as a potential addition to the wild and scenic rivers system, the designation pursuant to § 5(d) of that Act of a river area as one which federal agencies shall evaluate in their planning reports does not place the river in the category of a potential addition to the wild and scenic rivers system or withdraw the bed or banks of the river or lands within one-quarter mile of the bank of the river from mineral location.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

WITHDRAWALS AND RESERVATIONS

GENERALLY

An attempt to locate a mining claim made while the land is included in an application to withdraw the land from location or entry for metalliferous minerals under United States mining laws is invalid since the notation of the filing of the application on the land office records segregates the land from lands available for disposal under the mining laws to the extent that the proposed withdrawal would.

Lands which are known to be underlain by deposits of oil shale are withdrawn from operation of the United States mining laws by Executive Order 5327 of April 15, 1930, as supplemented by Public Land Order 4522 of September 13, 1968.

The regulation of the Department providing that the notation of the filing of an application for withdrawal shall segregate the land from disposal under the United States mining laws to the extent that the proposed withdrawal would is a reasonable regulation which is essential to effectuate withdrawals.

Kelly B. Hall, George I. Hackford, Thomas V. Reynolds, 4 IBLA 329 (Feb. 14, 1972)

Where, by the alteration of a river channel, the private land along the south bank was eroded away and the withdrawn federal land on the north bank was increased by accretion and, subsequently, the river made an avulsive return to its approximate original position, a class 1 application to purchase the accreted land under the Color-of-Title Act is properly rejected because the accreted land came under the influence of the withdrawal as it formed against the withdrawn land, and withdrawn land is not subject to the Color-of-Title Act.

Margaret C. More, 5 IBLA 252 (Mar. 23, 1972)

Equitable adjudication may be invoked to permit consideration of a homesite purchase application which was not filed within the time required, where substantial compliance with the law has been

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

alleged, and the claim was initiated before the land was withdrawn by Public Land Order No. 4582.

Herbert W. Simms, 7 IBLA 51 (Aug. 4, 1972)

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of April 29, 1950, because the claimant did not file a notice of location or purchase application prior to the withdrawal.

Kennecott Copper Corporation, 8 IBLA 21 (Oct. 6, 1972) 79 I.D. 636

Equitable adjudication may be invoked to permit consideration and reinstatement of a headquarters site purchase application where a survey deposit was not paid within the time required, but substantial compliance of the law otherwise has been alleged, and the claim was initiated before the land was withdrawn by Public Land Order No. 4582.

Beverly J. Hayes, 8 IBLA 287 (Dec. 6, 1972)

The Department of the Navy has exclusive jurisdiction over the petroleum resources within Naval Petroleum Reserve No. 4, and the Secretary is not authorized to issue oil and gas leases on lands embraced within the Reserve.

Chris Palzer, et al., 8 IBLA 299 (Dec. 6, 1972)

Since § 9(d) of the Wild and Scenic Rivers Act withdraws from mineral location only lands which constitute the bed or bank or are situated within one-quarter mile of the bank of a river listed in § 5(a) as a potential addition to the wild and scenic rivers system, the designation pursuant to § 5(d) of that Act of a river area as one which federal agencies shall evaluate in their planning reports does not place the river in the category of a potential addition to the wild and scenic rivers system or withdraw the bed or banks of the river or lands within one-quarter mile of the bank of the river from mineral location.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

EFFECT OF

Mining claims located on land withdrawn from mineral entry are null and void ab initio.

Where the mineral claimant asserts that his claim is not located on land withdrawn from entry under the mining laws, and the record indicates that part of the claim is not on withdrawn land, the claim cannot be declared null and void ab initio for having been located on land withdrawn from mineral entry without a hearing to determine the facts.

Wesley Laubscher, 4 IBLA 246 (Jan. 12, 1972)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

An oil and gas lease offer filed for lands which are at that time withdrawn for Indian purposes by an Executive Order is properly rejected. Such an offer is nugatory and cannot be given life, even by a subsequent restoration of the lands.

M. F. Trask, 4 IBLA 252 (Jan. 13, 1972)

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn.

Oliver and Robert A. Reese, Silver Associates, Inc., 4 IBLA 261 (Jan 21, 1972)

Public Land Order 4582, as modified, did not bar the granting of an application to purchase a trade or manufacturing site where the record shows the claim was initiated prior to December 14, 1968. 43 U.S.C. § 687a (1970).

The withdrawal imposed by Public Land Order 4582, as modified, terminated with the enactment of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688.

C. Rick Houston, 5 IBLA 71 (Mar. 1, 1972)

An application filed pursuant to the Act of September 26, 1968 (82 Stat. 870, 43 U.S.C. §§ 1431-1435 (1970)), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until the revocation or modification of the withdrawal order, and it is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Rowe M. Bolton, 5 IBLA 226 (Mar. 22, 1972)

Where, by the alternation of a river channel, the private land along the south bank was eroded away and the withdrawn federal land on the north bank was increased by accretion and, subsequently, the river made an avulsive return to its approximate original position, a class 1 application to purchase the accreted land under the Color-of-Title Act is properly rejected because the accreted land came under the influence of the withdrawal as it formed against the withdrawn land, and withdrawn land is not subject to the Color-of-Title Act.

Margaret C. More, 5 IBLA 252 (Mar. 23, 1972)

An application for a right-of-way on land under a form of withdrawal which precludes the

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

granting of such applications is nugatory and cannot be given life after its date of filing, even by a restoration of land during pendency of an appeal from its rejection.

Public Land Order 4582, as modified, was revoked and the withdrawal imposed thereby terminated by the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688).

Communication Equipment and Services, Inc., 6 IBLA 44 (May 12, 1972)

The withdrawal imposed by Public Land Order 4582, as modified, terminated with the enactment of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688.

Richard Lee Farrens, 7 IBLA 133 (Aug. 25, 1972)

The withdrawal imposed by Public Land Order 4582, as modified, terminated with the enactment of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688.

Alvin R. Aspelund, 7 IBLA 165 (Aug. 31, 1972)

The withdrawal imposed by Public Land Order 4582, as modified, terminated with the enactment of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688.

Carla D. Botner, 7 IBLA 335 (Sept. 26, 1972)

A petition for reinstatement of a homesite claim will be denied where the record clearly establishes that the homesite claim settlement was initiated at a time when the land was withdrawn from appropriation.

Leon A. Webster, 7 IBLA 333 (Sept. 26, 1972)

While land is withdrawn from mineral location no rights to the land may be gained under mining claims located during the withdrawal period.

Gardner C. McFarland, 8 IBLA 56 (Oct. 13, 1972)

An application for a coal prospecting permit is properly rejected upon a determination that the lands applied for are withdrawn by Executive Order 5327 of April 15, 1930.

John R. Shelburne, 8 IBLA 115 (Nov. 14, 1972)

An oil and gas lease offer filed for lands which at the time of filing have been withdrawn for Indian purposes by an Executive Order is properly rejected.

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn.

Tenneco Oil Co., 8 IBLA 282 (Dec. 6, 1972)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

An application filed pursuant to the Act of September 26, 1968, 82 Stat. 870, 43 U.S.C. §§ 1431-1435 (1970), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

Lands which have been withdrawn from entry under Executive Order remain so withdrawn until the revocation or modification of the withdrawal order, and it is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they are withdrawn.

John C. Amonson, 8 IBLA 346 (Dec. 11, 1972)

Lands withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and reserved for selection by a Regional Corporation pursuant to the Alaska Native Claims Settlement Act are not available for leasing under the Mineral Leasing Act of 1920 and an oil and gas lease offer for such land is properly rejected although filed prior to the withdrawal.

James D. Johnson, et al., 8 IBLA 348 (Dec. 11, 1972)

Mining claims located after the land has been segregated from appropriation under the mining laws by notice of proposed classification under the Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-18 (1970), published in the Federal Register are properly declared null and void ab initio.

Rudolph Chase and Raymond W. Voss, 8 IBLA 351 (Dec. 11, 1972)

An application for a coal prospecting permit is properly rejected upon a determination that the lands applied for are withdrawn by Executive Order 5327 of April 15, 1930.

Heath B. Fowler, 8 IBLA 376 (Dec. 12, 1972)

The portion of a homestead settlement located on lands under power project withdrawals is null and void and such lands remain reserved from entry, location or other disposal under the public land laws until the withdrawal is vacated.

The right of a homesteader to equitable adjudication is determined as of the date on which he has substantially complied with the homestead law, and this right is not affected by a subsequent withdrawal under the Alaska Native Claims Settlement Act, 43 U.S.C.A. § 1610 (1972).

Francis I. Hunt, 8 IBLA 390 (Dec. 19, 1972)

Subsequent modification or revocation of an order withdrawing lands from mineral entry does not validate a claim located while the lands were closed to location.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

WITHDRAWALS AND RESERVATIONS--Continued

POWER SITES

Patents cannot convey what the law reserves, therefore, patents issued after the Federal Power Commission had granted a license for a transmission line are subject to the reservation prescribed by section 24 of the Federal Power Act regardless of whether or not the reservation was stated in the patent.

Arizona Public Service Company, 5 IBLA 137 (Mar. 13, 1972) 79 I.D. 67

An application filed pursuant to the Act of September 26, 1968 (82 Stat. 870, 43 U.S.C. §§ 1431-1435 (1970)), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

Rowe M. Bolton, 5 IBLA 226 (Mar. 22, 1972)

Under the Mining Claims Rights Restoration Act of 1955, public land within a preliminary permit issued by the Federal Power Commission under the Federal Power Act is not open to entry under the mining laws; a mining claim located after the permit has issued is properly declared void ab initio without a hearing.

Foster Mining and Engineering Company, 7 IBLA 299 (Sept. 22, 1972) 79 I.D. 599

Where lands within power site withdrawals were restored to mineral location by the Mining Claims Rights Restoration Act, they will subsequently be closed to such location when and so long as such lands are within a preliminary permit issued by the Federal Power Commission or an application for a license for a project filed by the permittee while the permit is in effect.

The Mining Claims Rights Restoration Act did not retroactively validate mining claims located prior to the Act while the land was within a power site withdrawal.

The Bureau of Land Management, without holding an evidentiary hearing, may properly declare that mining claims were null and void ab initio when they were located while land was within a power site withdrawal and no rights therein could be based upon the original locations. However, such a finding does not determine the validity of claims located after the lands were opened to mineral location by the Mining Claims Rights Restoration Act or held thereafter for the period prescribed by 30 U.S.C. § 38 (1970).

Gardner C. McFarland, 8 IBLA 56 (Oct. 13, 1972)

An application filed pursuant to the Act of September 26, 1968, 82 Stat. 870, 43 U.S.C. §§ 1431-1435 (1970), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

John C. Amonson, 8 IBLA 346 (Dec. 11, 1972)

WITHDRAWALS AND RESERVATIONS--Continued

RECLAMATION WITHDRAWALS

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of a withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Ralph J. Mellin, 6 IBLA 193 (June 19, 1972)

An application under the Act of April 23, 1932, 43 U.S.C. § 154, for restoration to mineral location and entry of reclamation withdrawn lands will ordinarily be rejected when the Bureau of Reclamation has recommended against it where there remains a possibility of the location of project features in the future, even though there are no project features on the land at the time of filing the petition for restoration.

Where an applicant under the Act of April 23, 1932, 43 U.S.C. § 154, for restoration to mineral location and entry of reclamation withdrawn lands alleges that the lands contain valuable minerals, which can be removed before a proposed dam is completed, and that it is willing to operate in any way as directed for the protection of the interest of the United States, the case will be remanded for a mineral examination and report to determine whether the alleged mineral deposits are of sufficient value to make mining operations profitable.

Surprise Venture Associates, 7 IBLA 44 (Aug. 1, 1972)

Where applications for a mineral lease pursuant to the Act of October 8, 1964, 16 U.S.C. § 460(n) (1970), and alternatively, for the restoration of a portion of the same land from the first form of reclamation withdrawal to mineral entry and location pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1970), are both rejected on the basis of adverse recommendations by the Bureau of Reclamation, the decision will be affirmed where it appears that it was predicated upon a due regard for the public interest and constituted a proper exercise of discretionary authority.

George S. Miles, Sr., 7 IBLA 372 (Sept. 29, 1972)

A homestead application filed for lands which are withdrawn for reclamation purposes and segregated by a classification to retain the land for multiple-use management must be rejected.

Curtis Wheeler, Billy J. Wheeler, 8 IBLA 148 (Nov. 16, 1972)

Mining claims located on lands within a reclamation withdrawal which were not open to mineral entry are properly declared null and void ab initio.

Ralph Page, 8 IBLA 435 (Dec. 22, 1972)

REVOCATION AND RESTORATION

An application for a right-of-way on land under a form of withdrawal which precludes the granting of such applications is nugatory

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION--Continued

and cannot be given life after its date of filing, even by a restoration of land during pendency of an appeal from its rejection.

Communication Equipment and Services, Inc., 6 IBLA 44 (May 12, 1972)

An application under the Act of April 23, 1932, 43 U.S.C. § 154, for restoration to mineral location and entry of reclamation withdrawn lands will ordinarily be rejected when the Bureau of Reclamation has recommended against it where there remains a possibility of the location of project features in the future, even though there are no project features on the land at the time of filing the petition for restoration.

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Surprise Venture Associates, 7 IBLA 44 (Aug. 1, 1972)

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George S. Miles, Sr., 7 IBLA 372 (Sept. 29, 1972)

STOCK-DRIVEWAY WITHDRAWALS

A desert land application filed for lands which are withdrawn for stock-driveway purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of a withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert M. Ford, 4 IBLA 321 (Feb. 11, 1972)

TEMPORARY WITHDRAWALS

A temporary withdrawal of lands containing oil shale deposits will continue in effect until revoked by the President or by an act of Congress.

John R. Shelburne, 8 IBLA 115 (Nov. 14, 1972)

WITHDRAWALS AND RESERVATIONS--Continued

TEMPORARY WITHDRAWALS--Continued

A temporary withdrawal of lands containing oil shale deposits will continue in effect until revoked by the President or by an act of Congress.

Heath B. Fowler, 8 IBLA 376 (Dec. 12, 1972)

WORDS AND PHRASES

"Causes beyond his control." **The term "causes beyond his control" does not encompass lack of economic feasibility in that compliance with contractual terms would render an operation unprofitable. It encompasses those things which might arise in the future and cannot include causes in existence at the time of the execution of the contract. The term only encompasses those things which directly and of themselves prevent compliance with contractual obligations.**

Andrew W. Miscovich, 6 IBLA 265 (June 29, 1972)

"Color of title." Land occupied by one purportedly claiming under color of title, but who does not establish that the land in issue was conveyed to him by an instrument which on its face purported to convey the land in issue, is not thereby removed from the category of "vacant" public lands.

S. V. Wantrup, Wallace Hardin, 5 IBLA 286 (Apr. 13, 1972)

"Community Property." **With respect to unpatented mining claims in states recognizing community property laws, the husband represents the community interest of himself and also his wife, and as to such interest the wife is considered to be in privity with her husband, and where a government contest is brought against such an unpatented mining claim with only the husband named in the notice of contest and complaint, the wife is represented in said cause as though she had been expressly made a party thereto.**

United States v. Melvin McCormick, 5 IBLA 382 (Apr. 28, 1972) 79 I.D. 155

"Competitive Bidding." Competitive bidding does not require that more than one bid be submitted before the authorized officer, but only that the officer, by due advertisement, give opportunity for everyone to bid.

Tipperary Land & Exploration Corporation, 7 IBLA 270 (Sept. 19, 1972) 79 I.D. 596

"Contiguous." The word "contiguous," used in relation to the public land laws, means directly abutting or adjoining. Lands which merely corner each other, or which do not touch at any point, are not "contiguous."

The Kemmerer Coal Company, 5 IBLA 319 (Apr. 14, 1972)

WORDS AND PHRASES--Continued

Dictum: With regard to cancellation of an oil or gas lease, the terms "known geologic structure" and "known to contain valuable deposits of oil or gas" could be distinguished on the basis that the presumptive productivity referred to in the definition of known geologic structure may be a matter of expert opinion, whereas the words "known to contain valuable deposits" connote matters of actual fact. 43 CFR 3100.0-5 and 3108.3.

James W. Smith, 6 IBLA 318 (July 13, 1972) 79 I.D. 439

"Habitable house." The term "habitable house", as used in 43 U.S.C. § 164 (1970), does not include a structure in Alaska with a leaky roof, torn insulation, and devoid of electric power and heating facilities.

United States v. Leonard F. Nelson, 8 IBLA 294 (Dec. 6, 1972)

"Known geologic structure." The term "known geologic structure of a producing oil or gas field," as used in 43 CFR § 3125.1(b) (1970), now 43 CFR 3103.3-2(b) (1971) has been defined as the trap, whether structural or stratigraphic, in which an accumulation of oil and gas has taken place, and in which there has been production. It includes all acreage that is presumptively productive.

McClure Oil Company, 4 IBLA 255 (Jan. 13, 1972)

"Primary term." An oil and gas lease which has been extended and has vitality only by reason of its inclusion in a producing unit is not within its "primary term" within the ambit of 30 U.S.C. § 226-1(d) (1970).

"Primary term" in that context includes all definite and finite periods of extension fixed by law. It does not include any period of time whose termination depends upon the occurrence or nonoccurrence of a contingency, e.g., the cessation or continuation of production.

Ashland Oil, Inc., et al., 7 IBLA 58 (Aug. 9, 1972) 79 I.D. 532

"Procured the cancellation of * * *." A preference-right applicant will be deemed to have "procured the cancellation of * * *" a homestead entry, within the meaning of 43 U.S.C. § 185 (1970), where he has alleged and proved facts, which are admittedly not a matter of public record, sufficient to cancel a homestead entry, even though the Department has alleged and proved other facts which would be sufficient to cancel a homestead entry, provided that the preference-right applicant initiated the contest of the homestead entry prior to any action by the Department to cancel the entry.

Paul Unruh, 8 IBLA 231 (Nov. 29, 1972)

WORDS AND PHRASES--Continued

"Range land." A person who owns lands contiguous to public lands, but who has leased all of his "range land" in the county in question, excluding "the approximately 51 acres comprising the home place" to another, under which agreement such other pays to his lessor $9,000 per annum; runs a grazing operation on such lands; utilizes his lessor's livestock; acquires title to the natural increase of such livestock, is entitled to proceeds from the sale of replaced livestock and of calves, except for the proceeds of bulls, and pursuant to the agreement the lessor divests himself of the right of entry and possession of the leased land, is not a qualified preference-right claimant since he is not a "lawful occupant of contiguous private land" within the ambit of 43 U.S.C. § 315(m) (1970) and 43 CFR 4121.2-1(c)(1) (1972).

"Lawful occupant of contiguous lands." The term "lawful occupant of contiguous lands," as used in 43 U.S.C. § 315(m) (1970) does not include the owner of such lands where, by contract, he has divested himself of control over the grazing operation conducted on such private lands.

Laurence A. Andren, Appellant, William J. Greenwald, Appellee, 7 IBLA 14 (July 24, 1972)

"Range management practices." The term "range management practices" encompasses multiple use considerations, including recreation and wildlife.

Mary A. Van Alen, 8 IBLA 77 (Oct. 27, 1972)

"Reasonable Diligence." As used in P.L. 91-245, and in 43 CFR 3108.2-1(c)(2) "reasonable diligence" in transmitting timely a rental payment for an oil and gas lease is interpreted as meaning posting the payment through the United States mail at no later date than that on which letters mailed thereon would, despite normal delays in the collection, transmittal, and delivery of mail, be delivered to the appropriate land office on or before the due date of the rental.

"Justifiable Delay." As used in P.L. 91-245, "justifiable delay" in making an oil and gas lease rental payment will be recognized only where sufficiently extenuating circumstances are present so as to affect the lessee's actions.

Louis Samuel, et al., 8 IBLA 268 (Dec. 6, 1972)

"Signed and Fully Executed." The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) (1971) allows the use of rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Louis Alford, Prescott A. Sherman, 4 IBLA 277 (Jan. 27, 1972)

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